SUPREME COURT OF THE UNITED STATES.

No. 74.

ROBERT PORTERFIELD, COMPL'T AND APPL'T,

vs.

MERRIWETHER L. CLARKE, AND MARTHA L., WILLIAM P., GEORGE R. AND THOMAS J. CLARKE, HEIRS AND DEVISEES OF WILLIAM CLARK, DEC., ET AL., RESP'S.

ON APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF KENTUCKY.

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S. D. Langtree, print.

UNITED STATES OF AMERICA.

Pleas before the Honorable John Catron and Thomas B. Monroe, Judges of the Eighth Circuit Court of the United States of America, in and for the Kentucky District, at the capitol, in the town of Frankfort, at the November term of said court, in the year 1841.

Be it remembered, that heretofore, to wit, on the sixteenth day of July, A. D. one thousand eight hundred and thirty-six, Robert Porterfield, by O. G. Cates, Esq., his counsel, filed in the clerk's office of said court the following bill in chancery, to wit:

Bill.

To the Honorable Judges of the United States of America, in and for the 7th Circuit, and District of Kentucky, in chancery sitting.

Your orator, Robert Porterfield, a citizen and resident of the State of Virginia, respectfully states, that by virtue of the various land laws of Virginia, and particularly those laws that made provisions for the payment of the officers and soldiers, &c., who served in or during a term of months or years in the American revolutionary war, on Virginia State line, or continental establishment, your orator became the owner and proprietor of two *land office military warrants*, one in the name of your orator, as heir of Lieutenant Colonel Charles Porterfield, in consideration of three years' service, for six thousand acres of land, bearing date 18th day of December, A. D. 1782; and the other warrant in the name of Thomas Quarles, for three years' service as a lieutenant in the State line, for 2,666⅔ acres of land, and dated 13th of June, 1783, which was for a valuable consideration assigned on the back thereof by said Quarles, to your orator, both of said warrants being for bounty land for the said State line service, in said war; all of which said facts will more fully appear by an inspection of said warrants, here exhibited as warrants (No. 799) and (No. 58,) and prayed to be taken as part of this statement, marked (1) and (2). And by virtue of said warrants, and in accordance with the laws and resolutions of the Virginia legislature, your orator caused said warrants, or parts thereof, to be entered or located in the office of the principal surveyor of the land, set apart for the officers and soldiers of the Commonwealth of Virginia; and upon that land, included between the rivers Mississippi, Ohio, and the Carolina boundary line, then known as the district set apart for the officers and soldiers of the

Virginia State line, west of the Tennessee river, but now included and being in the county of M'Crackin, and State of Kentucky, and within the jurisdiction of your Honorable Court; which said entries or locations, caused to be made as aforesaid, were in substance as follows, to wit:

1784, *August 5th.*

No. 164. Robert Porterfield, heir, enters 1,200 acres, part of a military warrant, No. 58, beginning on the Ohio, at the mouth of Delaware creek, on the upper side, running up the creek 600 poles, when reduced to a straight line; thence at angles eastwardly, and with the river, for quantity.

1784, *August 9th.*

Robert Porterfield makes the following amendment to his entry: "No. 304, of 1,333⅓ acres, beginning at said Porterfield's upper corner, on the Ohio, of his entry, No. 164, for $1,200, acres; running up the Ohio to James Montgomery's entry, No. 170; running with s'd Montgomery's corner line to his S. west corner; running with his back line, and Thomas Clay's N. west line, No. 212, so far as a line running from the beginning, with the upper line of his former entry, and with the line of James Bradley's entry, No. 183; running at right angles from Bradley's upper line, to close in Clay's line, will include the quantity."

The following are the substance of the entries of Montgomery and Bradley, alluded to in your orator's entry, (No. 304,) to wit: "James Montgomery enters 1,000 acres, part of a military warrant No. 2,677, beginning at the mouth of Tennessee, centering at the mouth of a creek, including a tree branded thus, G. H.; running up the Tennessee, and along the Ohio; and thence at right angles, as the law directs, for quantity."

"James Bradley enters 1,000 acres, part of a military warrant, No. 2,665, beginning at the upper corner of Robert Porterfield's heirs' entry, No. 164, on Delaware creek, running up the creek 400 poles, on a straight line; thence at angles, eastwardly, parallel with Porterfield's upper line on the creek, for quantity."

1784, *August 9th.*

It appearing to the superintending officers that Robert Porterfield's entry, No. 317, has been made to clash with older entries through mistake, so as to deprive him of any land, they have removed it as follows:

Robert Porterfield enters 1,200 acres of land, part of a military warrant, No. 58, beginning on Delaware creek, at James Cannie's upper corner, No. 320; running with said Cannie's upper line 500 poles; thence parallel to and with the general course of the creek upwards, for quantity."

It appearing to the board of superintending officers that Robert Porterfield's entry, No. 319, has been made to clash with older entries, thro' mistake, so as to deprive him of any land, they have removed it as follows:

Robert Porterfield enters 1,200 acres of land, part of a military warrant, No. 58, beginning at said Porterfield's upper corner of his entry, No. 317, on Delaware creek; running with the back line of said entry, 500 poles; thence at right angles for quantity.

The following entries of Carvie and Biddle are alluded to in your orator's entry, No. 317, to wit:

James Carvie, ass'ee, enters 866⅔ acres, on part of a military warrant, No. 1,417, beginning at the upper corner of Clement Biddle's 1,000 acres entry, No. 316, on the lower side of Delaware creek; running up the creek 400 poles, on a right line; thence out at angles, and parallel to Biddle's upper line, for quantity.

Clement Biddle, ass'ee, enters *a* 1,000 acres, on sundry military warrants, beginning at the mouth of Delaware creek, on the lower side, running down the river Ohio 240 poles, when reduced to a straight ; and up the creek from its mouth, for quantity.

1784, *August 9th.*

Robert Porterfield enters 1,200 (acres,) as part of a military warrant, No. 58, beginning at the S. east corner of John Baytop's entry, No. 392, on Hunting creek; running with said Baytop's line 500 poles; thence at right angles, for quantity.

The following are the entries of John Baytop, (No. 392,) and those entries therein alluded to, to wit:

John Baytop enters 1,666⅔ acres, part of a military warrant, No. 1,565, beginning at the N. west corner James Quarles' entry of 1,333⅓, as No. 366, on Hunting creek, and running with Gregory Smith's back line 200 poles; thence parallel with and binding on the creek, for quantity.

James Quarles enters 1,333⅓ acres of land on a military warrant, No. 150, beginning at Winston Brown's corner, on the upper side of Hunting creek; running with his line to his S. east corner; thence at angles parallel to and with the general course of the creek, so far as shall include the quantity.

Winston Brown enters 1,000 acres, part of a military warrant, No. 195, beginning at the mouth of Hunting creek, running with G. Smith's upper line of *a* entry, No. 358, 400 poles; thence parallel to and with the general course of the Ohio, for quantity.

Gregory Smith enters 1,000 acres, part of a military warrant, No. 124, beginning at the mouth of Hunting creek, and running down the Ohio river 400 poles, when reduced to a straight line; thence at right angles from the river, for quantity.

All of which said original entries here referred to will more fully appear by an inspection of the original book of entries, in the land office; and copies thereof are here filed and exhibited as part of this

statement, marked (3, 4, 5, 6, 7, 8, 9, 10, 11.) Your orator here charges that said warrants, (No. 58, and No. 799,) or parts thereof, entered as afs'd, were located by the superintending officers in behalf of your orator, so *specially* and precisely as that other locators might with certainty locate other warrants on the *adjacent residuum*; and that the said locations or entries were in conformity with the laws of Virginia, and the rules and regulations of the land and surveyor's office afs'd. Your orator charges, that by the laws and acts of the Virginia legislature, and by the fact of the wild, savage, and unsettled condition of the said country, west of the Tennessee river, owing to the acts and unexpected interference of the Indians, who then claimed said district of country, he, your orator, was greatly delayed in having his said entries surveyed, and carried into grant. And it was not until the year 1834, said surveys were made in accordance with said entries, and with the laws of Virginia, the compact between the State of Virginia and Kentucky, on their separation, and the laws of Kentucky subsequently thereto enacted, &c.; all of which laws, compact, &c., are here referred to as part of this statement.

Your orator charges, that in the year 18—, patents for the lands included in each of said entries, surveys, &c., emanated from the State of Kentucky, to your orator; which said patents are five in number, here referred to, marked (A, B, C, D, and E,) and exhibited as part of this statement. Your orator charges, that by occasion of the premises afs'd, he is justly, legally, equitably vested and clothed with the fee simple right to all and each of said tracts of land alluded to in said patents; and that said land is worth more than $10,000. Your orator charges, that in the year 1824, he took peaceable and actual possession of each all of said tracts of land pattented as afors'd, and leased the same to divers tenants, who held and claimed the same, under your orator, for many years thereafter, as will more fully appear, by reference to written cases here referred to, and exhibited as part of this statement, marked (F and G); and being thus in the peaceable possession, as afs'd, of said land, and notwithstanding the fair and *bona fide* right and title of your orator, in and to said land, yet your orator charges, that one William Clark, a citizen of the State of Missouri, through the fraud and instrumentality of his agent or agents, did, through fraud and covin, procure one or all of the said tenants of your orator, to atone to him, the said Clark, and by unfair means of that kind, he, Clark, colourably obtained the possession of each and all of said tracts of land patented to your orator, as afs'd; and he, the said Clark, being thus possessed of said land, claims all and each of said tracts of land, as being included in the following treasury warrant, and entry thereafter made, to wit:

October 26th, 1780.

Col. George Rogers Clark offers to make the following amend-

ment to his several entries of 74,962 acres, entered 18th May, 1780, viz:

To begin on the Ohio, at the mouth of the Tennessee river; running down the , bounded by the drowned lands of said river, and the waters of the Mississippi, for quantity *a* of 74,962 acres, in one or more surveys.

N. B. The 74,962 acres should be 73,962 acres, but cannot be altered until a copy given out is returned; and likewise he, Clark, claims said land under a survey and patent that issued from the Commonwealth of Kentucky, on the 15th of September, 1795, to said George Rogers Clark, which said patent, survey, &c., is here referred to, and exhibited as part of this statement, marked (P, Q.)

Now your orator charges, that the said patent to Clark is older than those patents of your orator before referred to, and that Clark's patent includes the lands afs'd of your orator. Now your orator charges, that the said false and pretended claim of the said William Clark, to the lands of your orator, as afs'd, was founded on Virginia treasury warrant claims, and that by the laws of Virginia, while she was a colony of Great Britain, and after she became an independent State of the United States, he, the said George Rogers Clark, had no right to make an entry or location on any lands west of the Tennessee river, or on the lands included in the rivers Ohio, Tennessee, Mississippi, and the North Carolina line, on land office treasury warrant certificates; that by law he, the said George Rogers Clark, was expressly prohibited from making the said entry or location on land within the county (country) and limits of the Cherokee Indians, or the lands reserved by the Virginia Assembly for any particular nation or tribe of Indians, or in that tract of country reserved by resolution of the General Assembly of the State of Virginia, for the benefit of the troops serving in the then existing war (between Great Britain and the United States of America.) Your orator avers that said entry of George Rogers Clark was made on lands in the country and limits of the Cherokee Indians; that it was made on lands reserved by law for the Indian tribes; and that the said entry of George Rogers Clark was made on lands reserved by resolution of the Assembly of Virginia, for the troops then in the service of the United States, in the war for independence.

Your orator charges, that the consideration paid for said treasury warrant certificates, the same by virtue of which he, the said George R. Clark, made the said entry or location, was 40 pounds paid into the treasury; and that the said warrants were by law prohibited from being located on any lands that were not *waste* and *unappropriated*. And your orator here charges, that the said entry of the said George Rogers Clark was made on lands that were not waste and unappropriated at that time. Your orator charges, that at the time the entry of said George Rogers Clark was made, as

afors'd, that the Indian title to said lands west of the Tennessee river, and included in the rivers Ohio, Mississippi, Tennessee, and North Carolina boundary line, was not extinguished.

Bill contin'd.

And that in fact and in truth the said district of country west of the Tennessee river, has been and was subject to the claim or claims of various tribes of Indians, up to the year 1818; see the treaties with the various tribes, *six nations*, Cherokee, Chickasaw, &c., here referred to as part of this statement. Your orator charges, that said entry of Clark, made October 26th, 1780, for 74,962 acres of land, was in the violation of law; that the survey thereon is not in accordance with said entry, and is contrary to the calls thereof: that the said survey includes at least 150,000 acres of land. That the patent that issued, as afors'd, to the said George Rogers Clark, was in fraud, and against the law of the land, and null and void; and that the title of your orator, in and to said lands, is paramount, and superior to the title of the said Clark, both in law and equity. That said entry of Clark was never in fact surveyed by metes and bounds, by making the lines, corners, &c. That in fact and in truth the lines, corners, &c., of said survey were never in fact made or run or marked, until long after the time said survey purports to have been made; all of which facts are evident from the chops, marks, and annulets on the supposed line, and corner trees called for in said patents to Clark.

Your orator charges and relies, that the said entry of Clark is vague, uncertain and void; and that it is not *precise* and *special*. Your orator charges, that if the said entry of Clark had have been surveyed, as it should have been, to wit: "Down the Ohio river, bounded by the drowned land of the Ohio and Mississippi rivers, that it would not have included two of your orator's tracts of land, which are situate on the Ohio river, between the mouth of Delaware creek and the mouth of the Tennessee river; and these two surveys of your orator, one of 1,200 acres, the other of 1,333⅔ acres, are included, and are situate on the drowned lands of the Ohio river; and that the said two tracts of land never were intended to have been included in said Clark's patent. Your orator charges, that said entry was never surveyed by an authorised and legally appointed surveyor; that the person who in fact made said survey was not a lawful surveyor, and had not the power to make said survey. Your orator charges and relys that said entry, survey, and patent, under which the said William Clark pretends claim and title to the said lands of your orator, is void in law, in equity, and good conscience.

Your orator charges, that he is informed that one Andrew Smith, a citizen of the county of Calloway, and State of Kentucky, set up a pretended claim of some spurious and fraudulent kind, to all or a part of the said several tracts of land of your orator; the true history

of the pretended claim of said Smith, your orator is ignorant; but is informed he claims, by virtue of purchase from the State of Kentucky, at 12½ cents per acre, and that he has obtained patents from Kentucky for his said purchase of land. Your orator charges the title of said Smith to be inferior, both in law and equity, to that of your orator, and consequently null and void, so far as the claim of said Smith interferes with your orator's said land. But in as much as your orator is without remedy at common law, and only relievable in a court of chancery, where matters of fraud, &c., are investigated:

To the end, therefore, he prays that the said William Clark and Andrew Smith be made defendants to this bill, and that process be awarded against them, &c., and that on oath they be compelled true and perfect answers make to all singular the charges and allegations in this bill set forth; and that said defendants severally be compelled to exhibit their title or claim to each, or any part of the said tracts of land of your orators; and that they interplead with your orator, in regard to the superior and equitable right, to all, or any part of said land; and on a final hearing, your orator prays, that the claim and title of your orator in and to the aforesaid tracts of land be quieted, and that the said defendants, each of them, be decreed to release and surrender up their pretended claims to said land of your orator; and if it should more comport with justice, that the said Clark, defendant, be compelled to release so much of his said claim as interfered with the several tracts of land of your orator, and the said Smith likewise. And your orator prays that an account of the rents and profits of said land be taken, and the amount decreed your orator, accordingly. And your orator prays all other and further relief that his case merits, and to equity belongs, and in tender consideration will ever pray, &c.

CATES,
For Complainant.

And on the said 26th day of July, 1836, the following subpœna in chancery issued from the clerk's office of said court, upon said bill in chancery, to wit:

Subpœna on Bill.

United States of America, to the Marshal of the Kentucky District, greeting:

You are hereby commanded to summon William Clark, a citizen and residentof the State Missouri, and Andrew Smith, a citizen and resident of the State of Kentucky, to appear before the judges of our seventh Circuit Court of the United States of America, in and for the district of Kentucky, at the capitol in Frankfort, on the first Monday in November next, to answer a bill in chancery, exhibited

against them in our said court, by Robert Porterfield, a citizen and resident of the State of Virginia; and this they shall in no wise omit, under the penalty of four hundred dollars each. And have then there this writ.

In testimony whereof, Roger B. Taney, chief Justice of the Supreme Court of the United States of America, [L. S.] hath caused the seal of our said court to be hereunto affixed, this 16th day of July, A. D. 1836, and in the 61st year of our Independence.

Attest: JNO. H. HANNA,
C. C. C. K. D.

Marshal's Return, to wit:

Executed on the within named Andrew Smith.

A. W. NAYLOR,
Dep'ty Marshal for John M. McCalla, M. K. D.

The within named William Clark, no inhabitant of my district, and not found.

A. W. NAYLOR,
Deputy Marshal for J. M. McCalla, M. K. D.

And at a court held for the circuit and district aforesaid, on the 18th day of November, 1836, the following order was made in this cause, to wit:

Amd'd Bill filed.

This day came the complainants by counsel, and on his motion leave is given to file an amended bill making new parties, which is accordingly done. Which said amended bill is as follows, to wit:

ROBERT PORTERFIELD, complainant,
against
WILL. CLARK and SMITH, defendants. } In Chancery.

Amended Bill.

The complainant, Robert Porterfield, by way of amendment to his former and original bill filed herein, would further charge and state, that he is informed and believes, that one John McElyea, a citizen of the county of McCracken, and State of Kentucky, has the possession of a part of the said 1,333⅓ acre tract of land alluded to in the original bill, and that he, the said McElyea, pretends and makes claim to all or a part of the same, by virtue of a deed of conveyance from the said William Clark, defendant, and that he, the said McElyea, holds and claims, under the said patent of

George R. Clark, which said patent is older in date than the patent to your orator, but your orator charges is *fraudulent* and *void*; that the entry and survey of the said George R. Clark, under which the said McElyea claims title, is vague, uncertain and void; and that the right and title of your orator, to the said land claimed by the said McElyea, is superior in equity; therefore, that justice may be done in the premises, and as your orator is without remedy at common law, he prays that the said John McElyea be made a defendant to this and the original bill, and that process issue against him, &c., and that he be compelled, on oath, to answer all and each of the allegations set forth in the original bill, and this amendment; and that he, the said McElyea, be compelled to interplead with your orator, and exhibit his title papers, &c., and answer and say, whether or not he has the possession of any part of the said tract of land of 1,333¾ acres.

2d. Whether he does not hold the same under the patent of George R. Clark.

3d. Answer and say how, and in what manner, he obtained the possession of said land; from whom he obtained the same; when he obtained the same; who lived where he now lives at, or before the time he took possession; what number of acres he claims, &c.

And on a final hearing, your orator prays that the said McElyea be compelled to release his claim unto your orator, account for the rents, profits of land used by him, and that the said McElyea be compelled to deliver unto your orator, peaceable possession of the said land claimed by him, the said McElyea; and your orator prays all other and further relief, as prayed in his original bill, and that this be considered as a part thereof, fully, against the said McElyea; wherefore, &c.

O. G. CATES,
Solicitor for comp'ts.

And on the 24th day of November, 1836, the following subpœna in Chancery issued from the clerk's office upon said amended bill, to wit:

Subpœna on Amd'd Bill.

The United States of America, to the Marshal of the Kentucky district, greeting:

You are hereby commanded to summon John McElyea, a citizen of the State of Kentucky, to appear before the judges of our seventh Circuit Court of the United States of America, in and for the district of Kentucky, at the capitol in Frankfort, on the first Monday in May next, to answer an original and amended bill in chancery, exhibited against him in our said court, by Robert Porterfield, a citizen of the State of Virginia. And this he shall in no

wise omit, under the penalty of four hundred dollars, and have then there this writ.

In testimony whereof, Roger B. Taney, Esq., chief Justice of the Supreme Court of the United States of America, hath caused the seal of our said court to be hereunto affixed, this 24th day of November, A. D. 1836, and in the 61st year of our Independence.

[L. S.]

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's Return, to wit:

Executed 11th March, 1837.

JNO. M. M' CALLA, *M. K. D.*

Answer of Wm. Clark filed.

And at rules held in the clerk's office of the court aforesaid, in the month of February, 1837, until when this cause was continued, came the defendant, William Clark, by his counsel, and filed his answer to the complainant's bill herein, which answer is in these words and figures, to wit:

Answer of Wm. Clark.

The answer of William Clark, to a bill exhibited against him in Chancery in the United States Court, seventh circuit and district of Kentucky, by Robert Porterfield, a citizen of Virginia.

This now and at all times hereafter, reserving to himself the benefit of all just exceptions to said bill, for the many errors, uncertainties, &c., contained therein, for answer thereto, or to so much as he is advised is material for him to answer to, answereth and saith:

That he is not apprised of validity of the land warrants with the assignment thereon, as referred to, and relied on by compl't as the basis of his claim, as set up, nor does he know any thing of the consideration passing and set forth in complainant's bill. He therefore requires full proof of these facts; he denies that said warrants *warrants* were "*located or entered*" in accordance with the laws of Virginia; but charges that the entries pretended to be made by virtue of these warrants, were entered or located upon lands not then subject to location or entry, but upon lands that had, prior to the date of compl'ts entry, been entered and located by Col. George R. Clark, viz: the 18th of May, 1780, and amended the 26th of October, 1780, which entry was surveyed 17th June, 1784, and patented to the said G. R. Clark the 15th Sept., 1796; copies of said entry, survey and patent, are referred to as part hereof. Your orator charges that the entries of the said compl't, and the entries upon

which the said complt's entries depend, are vague, uncertain, and devoid of that specially necessary to a valid entry; that the objects called for were not objects of notoriety and specialty, and the description not such as to enable subsequent locators with ordinary diligence and research to find them. He charges that the surveys in said entries are not in conformity thereto; that they are varient therefrom, and upon other and different land than that called for in the entries, and that said surveys all contain within the boundary more land than called for in the entries. He denies that said entries, surveys and patents, have been made and procured in accordance with the laws of Virginia, articles of stipulation, and compact between Virginia and Kentucky, and the laws of Kentucky; but charges that they have been obtained in violation of all those laws. Your respondent denies that compl't ever had peaceable possession of his said several tracts of land, as set forth in his bill. This respondent also denies that he either, by himself or agent, by fraud or any improper means, procured his, complt's tenants to attorn.

This respondent charges, that as early as the 25th of June, 1819, he by his agent, D. Fitzhugh, placed upon his lands, west of the Tennessee river, one James Martin, giving him the possession of the entire tract of land, covered by the patent for 36,962 acres, by written lease, which is made part hereof; that when this respondent was so possessed by his tenant actually residing on the land, the agent of the compl't fraudulently, and in violation of the possession of respondent, prevailed upon certain persons to take leases of the said compl't of part of this tract so possessed by respondent; that this respondent was early apprised of this intrusion, and took legal steps to oust the tenants of compl't, and evict them from his possession; all which will appear by reference to the proceedings in the several writs of forcible entry and detainer, between respondent's tenants and the tenants of compl't; copies of which are referred to, and made part of this answer.

This respondent denies that the tenants of compl'ts *attorned*; but charges, that by proper course of law said tenants were *actually* evicted, and the possession of the premises restored to *compl't*. He admits that some, or perhaps all said tenants, after the possession was restored to respondent, did take leave under this respondent; he charges that he has had the actual and peaceable possession by warrants on the lands now in dispute, for more than seven years before the filing the compl'ts bill herein. He therefore relies upon the statutes of limitation, made and provided in such cases, as a bar to compl'ts recovery. Your respondent charges, that the entries, surveys and patents under which he claims title, are not in violation of law, as charged by compl't, but that they are in conformity thereto, made upon lands at the time of the entries, by law, subject to appropriation by treasury warrants, and that they do not come within the power of the laws referred to by complt's. He charges

that his entry is valid, possessing all the specialty requisite to a good entry; that the surveys are in conformity to the entry, and were actually made by a proper person, and embrace the land called for in the entry. This respondent that his equitable and legal title to said land *are* both older and better than compl't. He also relies on the fact that this question has heretofore been litigated betwen the compl't and the late George R. Clark, the patentee under whom respondent claims in the District Court of Kentucky, and adjourned to the Virginia Court at Richmond, before the separation of Virginia and Kentucky, and decided in favor of respondent, in the case of H. Marshal, Geo. Mute, &c., superintendents for the officers and soldiers of the Virginia State and continental line, on caveat ag't G. R. Clark, in which case all those points, except the *possession* as set up in compl'ts bill, were put in issue, and relied upon by the military claimants.

This respondent states, that he derives title under the patentee, by deed from patentee, dated the day of also, by deed from George Woolfolk, who derives title from Samuel Dickerson, commissioner under decree of the Jefferson Circuit Court, in a suit in the name of Edmund H. Taylor, ex'r of Jno. Thruston, dec'd, ag'st the heirs and representatives of the said patentee; copies of said deeds and proceedings in said case are referred to as part of this answer.

This respondent having fully answered, denies all fraud, combination, &c., and prays to be dismissed with his costs, &c.

WM. CLARK.

STATE OF MISSOURI, CITY OF ST. LOUIS, *sct.*

I, John F. Darby, mayor of the city of St. Louis, do certify, that William Clark, whose signature is subscribed to the above answer, came personally before me, in the said city of St. Louis, and made oath that the statements made in said answer, so far as they depend upon his own information, are true; and so far as they depend upon the information of others, he believes that they are true.

In witness whereof, I have certified the same under the of the corporation of the said city of St. Louis, this 3d of Nov., 1836.

By the Mayor, JOHN F. DARBY.
A. WHENY,
Register city St. Louis.

Rule for Repl'n to ans'r.

And at a rules held in the Clerk's office of the court aforesaid, in the month of March, A. D. 1837, came the defendant, by his counsel, and entered a rule against the complainant for a replication to his answer filed herein.

Dism'd for want of Repl'n.

And at rules held as aforesaid, in the month of April, 1837, came

the defendant, by his counsel; and the complainant having failed to file a replication to the answer of said defend't, according to the rule of defend't entered herein, this suit is dismissed for want of said replication.

And at a court held for the eighth circuit and Kentucky district, at the capitol in the town of Frankfort, on the 17th day of May, 1837, the following order was made in this cause, to wit:

Replication to answer.

This day came the complainant by his counsel, and for replication to the answer of defendant, Clark, says, that the statements made in the answer of said Clark, so far as they contradict the allegations in the bill, are untrue; and that the allegations in his bill are true, and dedimus are awarded either party to take depositions generally; and this cause is remanded to the rules for further proceedings to be had therein.

And at a court held as aforesaid, for the circuit and district aforesaid, on the 17th day of November, 1837, until which time this cause was continued on the rules, the following order was made herein, to wit:

Amended Bill Filed.

This day came the complainant by counsel, and on motion, leave is given him to file an amended bill, which is done accordingly. Which amended bill follows in these words and figures, to wit:

Amended Bill.

Robert Porterfield, by leave of the court, begs leave to file the following statement of facts, as an amendment to his original bill filed herein against Wm. Clark, A. Smith, and J. McElyea.

This complainant charges, that since the exhibition of his original bill herein, he has been informed that the said Clark laid off, and set apart, one hundred or more acres of land at the mouth of the Tennessee river, within the limits of the tract of said complainant's, of 1,333⅓ acres, alluded to in his original bill, and one of the tracts of land now in contest, as a town called Paducah.

Your complainant and orator charges, that the legal title pretended to be vested in said Clark, defendant, in and to the land for said town, was, by an act of the legislature of Kentucky, vested in the trustees of Paducah, and their successors in office; that James B. Husbands, Charles C. Russel, Robert Enders, Valentine Owen, and James McPherson, are now the legal and duly appointed trustees of the said town of Paducah, and are now acting as such. Your orator charges, that the said town of Paducah is situate within the entry, survey and patent of your orator; and your charges,

he is informed, and here avers the fact, that the said William Clark, def't, has conveyed to one George Woolfolk, a citizen of the State of Kentucky, a large part or parcel of land included in the limits of the said town of Paducah, and many acres of land included within the limits of the entrys, surveys, and patents of your orator, and the lands now in contest. Your orator charges, and avers, that the right or title of the said trustees of Paducah, and the said Woolfolk, as obtained from Clark, defend't, are null and void, and inoperative against the claim of your orator; and that said trustees, and the said Woolfolk, the said Wm. Clark, the said McElyea, Smith, all had full notice of the entrys, surveys and patents of your orator, at the time they purchased the illegal and spurious claim and void right of G. R. Clark, the patentee of the treasury warrant claim. And at the time of their purchases respectively, aforesaid, each and all of them had full notice of the valid and superior claim of your orator to the land in contest. Wherefore, that justice may be done in the premises, your orator prays that the said James B. Husbands, Charles C. Russell, Robert Enders, Valentine Owen, James McPherson, trustees of the town of Paducah, and George Woolfolk, all and each citizens of the State of Kentucky, be made defendants to this amendment and the original bill filed herein, and that they, on oath, answer all and each the allegations as therein set forth; and that they exhibit the evidences of their pretended claim to all or any part of the land claimed by your orator, in his original bill; and on final hearing, your orator prays that each and all said defendants be compelled to surrender and release unto your orator, their pretended right and claim to all or any part of said land in contest, as afores'd, and that each and all said defendants be perpetually enjoined and restrained from further claiming, molesting or disturbing your orator in his valid right to said land, and that the same be to him forever *quieted;* and that the said defendants, and each of them, be compelled to surrender up the possession of said several tracts of land in contest. And your orator prays all other and further relief, as prayed in his original bill, and that equity affords in such cases, and that justice merits, &c., wherefore, &c.

CATES & MOREHEAD, *Att'ys for Comp.*

Subpœna on amended bill.

And, on the first day of December, 1837, the following subpœna in Chancery issued from the clerk's office of said court, upon said amended bill, to wit:

The United States of America, to the Marshal of the Kentucky District, Greeting:

You are hereby commanded to summon Charles C. Russell, Rob-

ert Ender, James McPherson, Valentine Owen, and James H. Husbands, trustees of the town of Paducah, and George Woolfolk, citizens of the State of Kentucky, to appear before the judges of our 8th Circuit Court of the United States of America, in and for the District of Kentucky, at the capital in Frankfort, on the first Monday in February next, to answer an original and amended bill in Chancery, exhibited against them, &c., in our said court, by Robert Porterfield, a citizen of the State of Virginia, and this shall in no wise omit, under the penalty of four hundred dollars. And have then there this writ.

In testimony whereof, Roger B. Taney, Esq., Chief Justice of the Supreme Court of the United States of America, [L. S.] hath caused the seal of our said court to be hereunto affixed, this 1st day of December, A. D. 1837, and in the 62d year of our independence.

Attest:

JNO. H. HANNA, *C. C. C. K. D.*

And, upon said subpœna, no return is made. And, at rules held in the clerk's office of the court afores'd, in the month of December, 1837, came the defendant, Mr. Elyea, by his counsel, and filed his answer to the complainant's bill herein; which answer follows in these words and figures, to wit:

Answer of John McElyea.

The answer of John McElyea, to a bill filed against him and William Clark, in the 7th Circuit of the United States Court for the District of Kentucky, held at Frankfort, Ky., by Robert Porterfield.

This respondent, for answer to said bill, saith it is true that he resides on one of the surveys of the compl't, as set forth in his bill; that this respondent purchased the land he lives on, 339 acres, of his co-defendant, William Clark, in the fall of 1827, and he resided thereon ever since the month of October, 1826; the first year as tenant of Wm. Clark, claiming under G. R. Clark's survey, and since '27, as purchaser of said claim. This respondent refers to the answer of his co-defendant, Wm. Clark, and adopts it as his own, and prays the court to consider it as such. And having fully answered, prays to be dismissed with his costs.

JOHN McELYEA.

STATE OF KENTUCKY,
McCracken County, sct.

This day, John McElyea personally appeared before me, and made oath that the statements in the foregoing answer, as made from his own knowledge, are true; and those stated upon the information of others, he believes to be true.

Given under my hand, as justice of the peace, in and for the County afs'd, this 24th Oct'r, 1837.

JNO. B. HICKS, *J. P. M. C.*

And, on the 23d day of November, 1837, "at a Circuit Court held as af'sd, at the capitol in Frankfort," the following order was made in this cause, to wit:

This day came the parties aforesaid, by their counsel, and, on motion of complainant's counsel, leave is given to either party to take depositions generally, and further leave is given the parties to retake any depositions heretofore taken.

Order of Survey.

And, on motion of defendant's counsel, it is ordered that the surveyor of McCracken County do go on the land in controversy between the parties, on the day of next, if fair, if not, then on the next fair day, and then and there survey and lay off the same as either party may direct, having due regard to all evidence that may be produced, report all matters of fact specially, and return one fair plat and certificate thereof, into the clerk's office of this court, thirty days at least before the day of trial.

And the marshal, or one of his deputies, is directed to attend the said surveyor, to remove force, should any be offered.

Whereupon, the complainant's counsel moved the court for an order of survey, directed to Francis Taylor, which was objected to by defendant's counsel; upon consideration whereof, the court overruled said motion.

Answer of the Trustees of Paducah, filed.

And, at rules held in the clerk's office of the court aforesaid, in the month of February, 1838, until which time this cause was continued on the rule, came the defendants, the trustees of Paducah, and filed their joint answer herein, which is in these words and figures, to wit:

Answer of the Trustees of Paducah.

The joint answer of Charles C. Russell, Robert Enders, James McPherson, Valentine Owen, and James B. Husbands, as trustees for the time being, of the town of Paducah, Ky., to a bill in Chancery, filed against them, William Clark and others, in the Circuit Court of the United States, Seventh Circuit and Kentucky District, by Robert Porterfield, a citizen and resident of the State of Virginia.

These respondents, saving and reserving to themselves the benefit of all just exceptions to the many errors and mis-statements, as

set forth and contained in complainant's bill, for answer thereto, or to such parts thereof as they are advised is material for them, as trustees afor'sd, to answer, say, that as to all of said complainant's entries, surveys and pat*t*ents, other than those that are said to commence at the mouth of the Delaware creek, and to run up the Ohio river, until they reach the entry of said James Montgomery, being two in number, one for 1200 acres, and the other for 1333⅓ acres, they have nothing to say. But, as the complainant contends for these two claims being valid, as surveyed and pat*t*ented, they feel bound, not only from a sense of duty which they owe the people of Paducah, but also from the facts and the law relative to said claims, to dispute their legality, at least so far as the town of Paducah (which it is said they include,) is concerned. That complainant has a right to lands for his services rendered the country, they do not gainsay; but that he has any legal or valid claim at law or in equity to the particular lands on which Paducah is situated, they do most positively deny; first, because they charge that the entry for 1200 acres calling to commence at the mouth of Delaware creek, and to run up the same 600, when reduced to a straight line, and then at right angles eastwardly, and with the river for quantity, has not been surveyed according to the entry, but varient and different therefrom, to wit, in this, that instead of running from the upper end of the 600 pole line at right angles, eastwardly with the river, that the survey runs nearly straight the whole length of the next line, and then to the river, whereby the upper line of said survey is made to reach at least one mile further up the Ohio river, than it would do if run according to the entry. That the next entry calls to begin at the upper corner of said last mentioned entry, and to run up the river to James Montgomery's entry. That according to the manner of surveying said lower entry, it become inevitable that the mile gained by the lower survey upon its entry, was thrown also into and thereby produced a corresponding error in the upper survey, by which alone the said upper survey was made to reach the town of Paducah, and actually to run within two hundred poles of the mouth of the creek at the mouth of the Tennessee, mentioned in James Montgomery's entry. These respondents will further charge, that nothing is wanting to prove the foregoing allegations, but a correct exposition of, and form to be given to said Montgomery's entry mentioned by said complainant. This entry calls for 1000 acres, and to begin at the mouth of the Tennessee, centering at the mouth of a creek running up the Tennessee and along the Ohio, and thence at right angles, *as the law directs*, for quantity.

These respondents contend and charge, that the call in the location to run *as the law directs*, has a direct reference to the act of Virginia, of 1779, which required the location and surveys of military lands and other land claims to be twice as long as wide. That from the mouth of said creek down to the town of Paducah, is not quite

three hundred poles, which will include, as the town has recently been laid off, near two-thirds of the town. But that by supposing Montgomery's entry to be in a square of 400 poles, and then by running up to his entry, is the only way by which complainant's survey can include the town. That to run out Montgomery's entry twice as long as wide, will throw its lower boundary quite to the lower side of Paducah, down the river, leaving out most of the town. They do therefore charge that complainant's survey is varient from his entry, and so far as varient, is, under the 4th section of the act of this State, passed 1820, relative to surveying said military claims, utterly null and void. They further charge that his said entries are not so special and precise as to enable others, with reasonable diligence, to locate the residuum, as by law they should have been. They do further charge that the beginning of said entries, as called for, was not, at the date of the same, notorious and known. They do also dispute its identity, in fact, being the same place where said surveys begin.

These respondents do further alledge, that they and their predecessors, and those under whom they claimed, had, and yet have, a legal title, deducible of record, from the commonwealth of Kentucky, to all the lands on which said town of Paducah is situated; and that they and their predecessors, and William Clark, from and under whom they, as trustees, claim, had and held full and entire possession of all of said town lands, for more than seven years next before the commencement of said complainant's suit. They do further charge and rely on the fact, that the legislature of Kentucky have condemned, as town property, and by law vested in them and their successors, the legal title to all the lots, &c., in said town, which operated by way of legal transfer to them, as a corporation, of all of said lots in said town, leaving said complainant with his remedy against said Clark, for full remuneration, if indeed he ever had any title to the same, which they deny.

They do also further charge, that said complainant has well known for many years, that Paducah was a town with trustees, and that the sales of lots were continually making in the same, to divers persons, for valuable consideration, without any notice of his pretended claim, and that notwithstanding said complainant has such knowledge, yet he has lain by and permitted said sales of lots to be made from time to time, without exhibiting his title thereto, (except once recently,) after all the lots in the incorporated part of said town had been previously sold; whereby he has been guilty of fraud upon said town and purchasers, and in equity is entitled to no relief, although he may have had the title once in him.

These respondents do also make the answer of said Wm. Clark a part hereof, and pray the same to be so taken. And upon a final hearing, they pray that complainant's bill be dismissed, &c.

HUBBARD,
for Trustees.

McCracken County, *sct.*

This day personally came before me, the subscriber, a justice of the peace for said county, the above named defendants, Charles C. Russell, James McPherson, Robert Enders, James B. Husbands, and made oath that the matters and statements in said answers contained, so far as made from their own knowledge, are true, and so far as made from the information of others, they believe to be true.

Given under my hand, this 16th of December, 1837.

G. SMEDLEY, *J. P. M. C.*

And at rules held as aforesaid, in the same month, (February,) 1838, came the defendant, George Woolfolk, and filed his answer herein, which answer follows in these words and figures, to wit:

Answer of George Woolfolk.

The answer of George Woolfolk, to a bill filed against him and others, in the Eighth Circuit Court of the United States of America, for the District of Kentucky, by Robert Porterfield.

This respondent, for answer to said bill, saith, it is true that he has purchased of said Clark, his co-defendant, several lots which lie in the alledged tracts of compl't's claim, and to which deeds have been made and recorded.

This respondent refers to the answers of Wm. Clark, his co-defend't, adopts the same as a part of his answer, and prays that the court will receive the same as such; and having fully answered, prays to be dismissed with his costs, &c.

G. WOOLFOLK.

State of Kentucky.

The foregoing answer was, by the said George Woolfolk, this day sworn to before me, James Shannon, a justice of the peace in and for Franklin County, this fourth January, 1837.

JAMES SHANNON, *J. P.*

And at a Circuit Court held for the Circuit and District aforesaid, on the 9th day of November, 1838, "until which time this cause was continued on the rules," the following order was made in this cause, to wit:

Bill of Revivor filed.

This day came the *parties* aforesaid, by *their* counsel, and by consent, leave is given *him* to file a bill of revivor herein, which was done accordingly; which bill of revivor is as follows, to wit:

PORTERFIELD, *vs.* WM. CLARK. } In Chancery.

Bill of Revivor.

The complainant, in addition to the facts stated in his original bill and amended bill filed herein, begs leave to state and charge, that since the last term of this court, the said William Clark, one of the defendants herein, hath departed this life intestate, leaving the following persons his heirs and representatives, to wit: Martha Lewis Clark, Wm. Preston Clark, George H. Clark, and Thomas J. Clark, all of whom are prayed to be made defendants to the original amended bill, and this bill of revivor, and that they and each of them answer the same fully. Your orator prays that this be considered as a bill of revivor against them, and that this suit be revived accordingly; and on a final hearing, your orator prays all and every decree be rendered herein against them, as would have been rendered on the original against the said William Clark, deceased; and that they be compelled to release their right and title in and to the said tracts of land mentioned in the original bill, to the complainant. And your orator prays all further relief, &c.

CATES, *Attorney for Complt.*

And, on the 28th day of December, 1838, the following subpœna in chancery, issued from the clerk's office of the court aforesaid, upon said bill of revivor, to wit:

Subpœna on Bill of Revivor.

The United States of America, to the Marshal of the Kentucky District, greeting:

You are hereby commanded to summon Martha Lewis Clark, William Preston Clark, George H. Clark, and Thomas J. Clark, heirs and representatives of William Clark, dec'd, to appear before the judges of our 8th Circuit Court of the United States of America, in and for the District of Kentucky, at the capitol in Frankfort, on the first Monday in May next, to answer an original, amended, and bill of revivor in chancery, exhibited against them in our said court, by Robert Porterfield; and this they shall in no wise omit, under the penalty of four hundred dollars each. And have then there this writ.

In testimony whereof, Roger B. Taney, Esq., Chief Justice of the Supreme Court of the United States of America, [L. S.] hath caused the seal of our said court to be hereunto affixed, this 28th day of December, A. D. 1838, and in the 63d year of our independence.

Attest: JNO. H. HANNA, *C. C. C. K. D.*

Marshal's Return, to wit:

The defendants are no inhabitants of this district.

JNO. M. McCALLA, *M. K. D.*

April 30th, 1839.

Answer of Clark's heirs filed, and replication.

And at rules held in the clerk's office of the court aforesaid, in the month of March, 1839, "until which time this cause was continued on the rules," came the parties, &c., by counsel, and the defendants, the heirs of William Clark, deceased, by their counsel, filed their joint answer herein. And the complainants, by their counsel, say that the statements made in said answer, so far as they contradict the allegations in their bill, are untrue, and that the allegations in said bill are true. And dedimus are awarded either party, to take depositions.

Which said answer referred to, follows in these words and figures, to wit:

Answer of Wm. Clark's heirs.

The joint answers of Martha Lewis Clark, William Preston Clark, George Rogers Clark, and Jefferson Kerney Clark, an infant, by his guardian, George R. Clark, heirs and devisees of the late William Clark, to and original and bill of revivor, filed in the Court of the United States of America, 7th Circuit and District of Kentucky, against the said William Clark and these respondents, by Robert Porterfield, a citizen of Virginia.

These respondents, for answer, saith, that they refer to the answer of their said ancestor, William Clark, filed herein, and pray that it may be incorporated in and taken as part of this their answer, and they adopt the same as such.

These respondents, in addition, and by way of setting forth more explicit, some facts referred to in said answer, say, that in addition to the claim of title set forth by their ancestor, that he and they made their claim also under and by virtue of a deed from George R. Clark, the patentee, to their ancestor, and dated the day of , and recorded in the office of the court of appeals of Kentucky, a certified copy of which deed is referred to, marked (A,) and made part hereof.

The respondents would state, that the possession of the lands in controversy, under and by virtue of the title derived from the commonwealth of Kentucky, through the patentee, has been considered in the ancestor of respondents, and those claiming under him, since June, 1819. That in June, 1819, their said ancestor, by his agent, D. Fitzhugh, placed one James Martin upon his tract of 36,962 acres of land, which embraces the land in controversy, say

the tracts as numbered by complt. as 164, 304, 317, 319, 394, and gave to him a written lease for this entire tract as afs'd, for the term of 7 years, with the avowed intention of keeping the possession; and said Martin, from the date of said lease, and until the expiration thereof, as tenant as af'sd, did reside on said tract of 36,962 acres, and did permit one Jo. Daniel and others, as sub-tenants, to reside thereon; that the possession was so considered peaceable and uninterrupted, until 1824, when one Herron, pretending to be the agent of complainant, prevailed upon said Jo. Daniel to take a lease under him, by threats; if he did not, he would sue him. And the said Jo. Daniel, who had been residing on the land of respondents' ancestor from 1822, as the sub-tenants of your respondents' ancestor, by and with the consent of said Martin, as tenant from year to year, was, by the said Herron, fraudulently induced to take possession under compl't; and that others residing on the lands of your respondents, and under their title, *was* likewise induced to take leases under compl't. That they all, or most of them, transferred their leases; and on the 17th day of October, 1825, your respondents' ancestor, in the name of James Martin, sued out from the proper authority writs of forcible entry and detainer against all that were claiming the possession under complainant, and by due course of law, turned them out of the possession, which, on the 25th day of October, 1825, was delivered by the proper officer to the said James Martin, tenant as afs'd, which will appear by reference to the proceedings, a copy of which is referred to as a part hereof. Your respondent states that ever since, the possession, by actual occupancy, has been continued peaceable and uninterrupted, in your respondents' ancestors and those claiming under him, up to this date.

These respondents charge, that complt's never at any time had the actual possession of the lands claimed, or of any part thereof, and that the possession, both in law and in fact, hath been with these respondents. They deny that the entry in the name of George R. Clark, the patentee, was made upon the lands in the county or country of the Cherokees, or that they were made upon lands reserved for the Indian tribes; or that said entrys were made on lands reserved by resolutions of the General Assembly of Virginia, for the troops then in the service of the United States, in the war of Independence; or on lands not subject to appropriations by Treasury warrants, or on lands reserved by any law for any tribe or nation of Indians, or for the satisfaction of any military claim whatever.

These respondents deny, that the said Herron was the agent of compl't, and authorised to lease his lands, or pretended claim to land referred to in compl'ts bill. These respondents rely amongst other things, on their possession of more than seven years. They plead the various statutes of limitations in their favor, and rely on the

same as a bar to complainant's recovery. And fully answered, pray to be dismissed with their costs, &c.

M. L. CLARK,
WM. P. CLARK,
GEORGE R. H. CLARK,
JEFFERSON K. CLARK,
By his Guardian, GEO. R. H. CLARK.

STATE OF KENTUCKY, *Franklin County, sct.*

This day the within named George Rogers H. Clark, for himself and as guardian of Jefferson Kerney Clark, made oath before me, a justice of the peace, in and for said county, that the statements contained in the within answer, as made upon his own knowledge, are true, and those made upon the information of others, he believes to be true.

Given under my hand, as Justice of the Peace, in and for the county aforesaid, this 26th January, 1829.

H. WINGATE, *J. P.*

Rule for Hearing.

And at rules held in the Clerk's office of the court aforesaid, in the month of March, 1840, "until which time this cause was continued on the rules," came the defendants by their counsel, and entered a rule against the complainant, to set this cause for hearing at the next term.

And at rules held as aforesaid, in the month of April, 1840, came again the defendants by their counsel, and set this cause down for hearing.

And at a circuit court held for the circuit and district aforesaid, on the 12th day of May, 1840, the following order was made in this cause, to wit:

This day came the parties by their counsel, and on motion compl'ts counsel, leave is given either party to take depositions generally, and on further motion of complainant, this cause is continued until the next term.

And at the same court continued and held as aforesaid, on the 15th day of May, 1840, the following order was made in this cause, to wit:

Order of Survey.

On the motion of the complainant, it is ordered that the surveyor of county, do go on the land in controversy between the parties, on the day of next, if fair, if not, then on the next fair day, and then and there lay off and survey the same, as either party may direct, having due regard to all deeds and other evidence

that may be produced, report all matters of fact specially, and return one fair plat and certificate thereof, into the Clerk's office of this court, thirty days at least before the day of trial; and the marshal or one of his deputies is directed to attend the said survey or to remove force, should any be offered.

And at a court, continued and held as aforesaid, on the 6th day of November, 1840, the following order was made in this cause, to wit:

Supplemental Bill Filed.

This day, came the parties aforesaid, by their counsel, and on motion of complainant's counsel, leave is given him to file a supplemental bill, which is done accordingly; and by consent of complainant's counsel, leave is given George Woolfolk to answer thereto, for and on behalf of said Clark's heirs, and all other def'ts. Whereupon complainant's counsel filed exceptions to all the depositions filed by defendants; and by consent either party have leave to take depositions generally, and to retake any deposition heretofore taken, and cause to remain on issue.

And at the same court continued and held for the circuit and district aforesaid, on the 7th day of November, 1840, the following order was made herein, to wit:

Leave to Defts. to withdraw Depositions, &c.

On motion of defendants' counsel and with the assent of the complainant's counsel, leave is given the defendants to withdraw all their depositions now on file, also all the leases which they have filed, and copy of the record in the forcible entry and detainer case, with the original papers referred to therein, which papers were withdrawn accordingly.

The following is the supplemental bill filed herein, on the 6th day of November, 1840, to wit:

R. PORTERFIELD, complt.
against.
WM. CLARK'S heirs, &c. defts. } In Chancery.

Supplemental Bill.

The complainant, Robert Porterfield, by way of amendment and supplement to his former original bill filed herein, sheweth: that since the exhibition of his original amended bills, and bill of revivor, exhibited against the said William Clark, his heirs and others, in this court, he has learned by an examination of the archives of the State of Virginia, evidence conducing to prove the following facts, to wit: That at the time the various entries of com-

plainant were made in the surveyor's office, for the land district set apart for the officers and soldiers of the Virginia State line establishment, as set forth in his original bill, filed herein; he, the said George Rogers Clark, was the surveyor in said district, and the keeper of the office records and books, in which the said entries of complainant were made, as will better appear by a certified copy of the commission to the said George Rogers Clark, here exhibited and filed as part hereof, marked (X), and that he, the said George Rogers Clark, was at the time the said locations or entries of complainant were made as aforesaid, one of the superintending officers, duly solicited and appointed under the laws of Virginia, to superintend the location and entries of the lands of the said officers and soldiers, in the said district, and that at the time said entries were made as aforesaid, he, the said George Rogers Clark, acted as one of the said superintendents in the location of complainant's lands now in contest; that at the time said entries of complainant's were made, he, the said George Rogers Clark, never pretended to claim any right or interest in the land in contest; that the pretended entries as made by the said George Rogers Clark, on the land in contest, in virtue of Treasury land office warrants, and under which the heirs of said Wm. Clark and the other defendants claim right and title to the land in contest, were made by the said George Rogers Clark, on the part of the State of Virginia, and in order better to secure the said land for the benefit of the State of Virginia, in trust, for the use and benefit of the officers and soldiers on the State establishment; and to satisfy the just claims and rights of said complainant and other soldiers of the revolutionary war; and complainant charges, that he, the said George Rogers Clark, never did intend or pretend claim to the land in contest, until long after the entries of complainant were made as aforesaid; all of which facts are well known to each and all the said defendants in this suit, and particularly the heirs of the said Wm. Clark; and that the said William Clark, in his life time, well knew the said facts as herein stated and set forth; and your complainant is therefore advised to plead and rely on the said facts as shewing fraud on the part of the said George Rogers Clark, in afterwards attempting to appropriate the land in contest to his own use. The complainant further relies, that said facts show that all the rights and benefits from any appropriation of the lands in contest, should in justice and by operation of law, innure to the benefit of complainant. The complainant further charges, that since the exhibition of his original bill herein, he has learned, and here charges the fact to be, that there never was any entry or entries made by the said George Rogers Clark, of land west of the Tennessee river in the proper surveyor's office; nor was the said surveys of said entries of George Rogers Clark, ever in fact made on the ground called for in said entries, nor were said entries ever in fact run out, marked by a surveyor duly and legally appointed as such, as will

appear by certified copies of said surveys, pretended to have been made by one Green Clay, here filed as part hereof, marked (H H). That the said pretended interest of said George Rogers Clark, under which the said defendants claim the land in contest, were made in the surveyor's office of the County of Jefferson, and not in the County of Lincoln, where the said lands in contest were then situated, all of which will better appear by certified copies of said entries, and certificates of surveys, here now referred to as part hereof, marked (D), from all which it will appear, that in fact and in truth, the said entries and amended entries of the said George Rogers Clark, and the same under which the said defendants all claim the land in contest, never were made in the proper surveyor's office, according to the laws of the State of Virginia, and that said entries are void in law, and that the surveys made thereon and the patents issued thereon, and the same under which the defendants claim, are void; all of which facts are charged to be in the personal knowledge of each of said defendants. Therefore, that justice may be done in the premises, the complainant prays that the foregoing statement of facts and exhibits be made part of his original, amended and revived bills herein filed, by way of amendment and supplement thereto; and that each of said defendants be compelled on oath to answer the same, and that process issue thereon, accordingly, against them, returnable, &c.; and here prays for relief as in his said former bill, and that his claim to said land in contest be quieted and freed from the claims of said defendants, &c. CATES, *for Complainant.*

Answer of Defendants to Supplemental Bill.

And at a court continued and holden as aforesaid, for the circuit and district aforesaid, on the fourth day of May, 1841, the following order was made in this cause, to wit:

This day came George Wolfolk by his counsel, and on his motion, leave is given said Wolfolk to file his answer, for and on behalf of the defendants, which is done accordingly. Which answer follows, in these words and figures, to wit:

The answer of George Woolfolk, M. L. Clark, G. R. H. Clark, Jefferson K. Clark, John McElyea, and the Trustees of the town of Paducah, to an amended and supplemental bill, filed in the United States Court, held at Frankfort, Ky., by Robert Porterfield, against them.

These respondents, for answer, saith: that as at present informed and advised, they do not admit as true, as alleged by complainant, that at the time the entries of complt. *was* made in surveyor's office, for the land district set apart for the officers and soldiers of the State of Virginia, that the said George R. Clark was the surveyor in said district, and the keeper of the office records and books, in which said entries of complainant were made as

set forth in said complt's. bill, and require of complt. proof of the same; and these respondents say, if complt. be correct in this allegation, which is not admitted but traversed, that the said George R. Clark had long, prior to the establishment of said office of surveyor for the location of and surveying western lands, and the appointment of any surveyor thereof in good faith, located his entry appropriating the land in controversy; which said entries were made in the spring of 1780, and on the 26th Oct. 1780, amended, as will appear by reference to said entry filed in this cause. These respondents will admit that said George R. Clark may, by an act of the Virginia Legislature, have been appointed one of the superintendents to locate the lands of the officers and soldiers of Virginia, as alleged by complt.; but they deny that said George R. Clark ever accepted said appointment, or acted under the same; and they do most positively deny, so far as they are informed and believe, that he, as one of the superintendents aforesaid, or in any other character, had any agency, whatever, in the location of complts. lands as charged by him. They are advised and so charge, that said George R. Clark, from the first location of his said lands in the spring and fall of the year 1780, *that* he set up title thereto, and claimed the same in good faith, until his sale to William Clark, of said lands, in the year 1803; the said entry and surveys were made in good faith for his own benefit, upon his own warrants purchased for a valuable consideration, and not in behalf of or in any wise whatever, to benefit or strengthen, or favor the claim of the officers and soldiers of Virginia, on State establishment, or for any other person whatever, as set forth by complt. These respondents state, that as early as the 7th and 8th of June, 1784, the said George R. Clark caused said location or entries to be by a proper officer surveyed, which was long prior to the location of complt., which did not take place until August, 1784, and said surveys of said George R. Clark would have been immediately carried into grant, but for the caveat sued out by complt. and others, against the issuing grants thereon. These respondents state, that from the first appropriation of the land by entry up to this date, the said George R. Clark, and those claiming under him, have in good faith claimed said land, believing that in right and justice it also belonged to them. They charge that the entries were made in the proper office; the surveys thereon were properly made in strict conformity to law, and carried into grant, without any fraud, or even the imputation of fraud, until made at this late period by complainant; which charge on his part is without any evidence to support, and wholly gratuitous. The respondents denying all knowledge of fraud whatever, and having fully answered said amended bill, pray to be dismissed with their costs, &c.

G. WOOLFOLK.

May term, 1841.
Sworn to in open court by G. WOOLFOLK.
Attest: JOHN H. HANNA.

Exceptions to Depon. of Force Overruled.

And at a court held as aforesaid, for the circuit and district aforesaid, on the 10th day of May, 1841, the following order was made in this cause, to wit:

This day come the parties aforesaid by their counsel, and the court now being sufficiently advised of, and concerning the defendants' exceptions to the deposition of Peter Force, it is ordered that said exceptions be overruled.

The following are the exceptions filed by the defendants on the 6th day of November, 1840, to the deposition of Peter Force, and referred to, and overruled in the foregoing order, to wit:

CLARK, &c.
ads.
PORTERFIELD.

Exceptions to Depon. of Peter Force.

The defendants except to the deposition of Peter Force, taken by the complainant and filed in this cause, and will object to the same being read as evidence on the trial, on the following grounds:

1st. That the matters and things testified to by said Force, and the maps, charts, &c., referred to by him, as part thereof, are incompetent testimony, and not such as to make them evidence in this cause.

The maps, charts, &c., are only copies of copies of unofficial charts, &c., which do not import, and are not legally proved to be charts, &c., made or published under legal or competent authority.

That said witness, Force, has deposed to his opinion and belief of matters and things, of which it is incompetent in him to establish, merely by his opinion and belief.

Each of the documents attached to, and referred to in said deposition, are copies of copies, and incompetent to be proven in the manner they are attempted to be proven by said Force.

If any part of said deposition be incompetent evidence, the defendants except to, and will object to so much thereof being used or read as evidence in this cause, as expresses the opinion or belief of said Force, in regard to facts, and also as to so much thereof, as relates to the documents, chart, maps, &c. referred to therein; and they will object to the using or reading in evidence on the trial, each and all the documents, charts, maps, &c. referred to, and attached to said deposition, because each and all of them are insufficiently proven, and if sufficiently proven, are not competent evidence to be used on the trial.

OWSLEY, *for Defendants.*

And at a court held as aforesaid, for the circuit and district afore-

said, on the 11th day of May, 1841, the following order was made in this cause, to wit:

This day came the parties aforesaid, by their counsel, and on motion of complainant's counsel, this cause is continued until the next term.

Whereupon, the complainant by his counsel agrees that he will absolutely go into trial of this cause at the next term.

Order of Survey.

And on the further motion of complainant's counsel, and by agreement of defendants' counsel, it is ordered, that William M. Beall, of Christian County, Thomas Joyce, of Jefferson County, and Willis Blanton, of Franklin county, or either of them, do go upon the lands in controversy between the parties, on the day of next, if fair, if not, then on the next fair day, and then and there survey and lay off the same as either party may direct, having due regard to all deeds and other evidence that may be produced, report all matters of fact specially, and return one fair plat and certificate thereof, into the clerk's office of this county, thirty days before the day of trial; and the marshal or one of his deputies is directed to attend said surveyor to remove force, should any be offered.

And at a court held as aforesaid, for the circuit and district aforesaid, on the 9th day of November, 1841, the following order was made in this cause, to wit:

Exceptions to all Depons. withdrawn by parties.

This day came the parties aforesaid by their counsel, and by consent, all exceptions by either party, to depositions or survey filed, as to form of taking or making the same, are withdrawn.

Whereupon, this cause came on to be heard, &c., and there not being time to go through with the argument, the hearing is laid over until to-morrow.

And at a circuit court continued and held as aforesaid, on the 10th day of November, 1841, the following order was made herein, to wit:

This day came again the parties aforesaid by their counsel, and the argument of counsel continued, but there not being time to go through, the same is continued till to-morrow morning 9 o'clock.

And at a circuit court continued and held as aforesaid, on the 12th day of November, 1841, the following order was made herein, to wit:

This day came the parties aforesaid by their counsel, and the argument being fully heard, but the court not being advised, took time, &c.

And afterwards, to wit, at a circuit court continued and held for the circuit and district aforesaid, on the 13th day of November, 1841, the following order was made in this cause, to wit:

Decree Bill Dismissed.

This day came again the parties, &c., by counsel, and the argument being fully heard, and the court being sufficiently advised, doth order and decree, that the bill of complainant be dismissed, and that he pay to defendants their costs herein expended.

Whereupon, the said complainant prayed an appeal to the Supreme Court of the United States, which is granted, upon the complainant's entering into bond in the clerk's office, within forty days from this date, in the penalty of seven hundred dollars, with security conditioned according to law.

Copy of Appeal Bond.

Know all men by these presents, that we, Robert Porterfield, by his attorney in fact, O. G. Cates, and J. R. Alexander, are held and firmly bound unto Meriwether L. Clark, Lewis Clark, William Preston Clarke, George H. Clarke, and Thomas J. Clarke, heirs and representatives of William Clarke, deceased; George Woolfolk, Andrew Smith, John McElyea, and Charles C. Russell, Robert Enders, James McPherson, Valentine Owen, and James B. Husbands, Trustees of the town *of the town* of Paducah, in the sum of seven hundred dollars: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this 17th day of December, 1841.

The condition of the above obligation is such, that whereas the above bound Robert Porterfield prayed for, and obtained an appeal from a decree of the Eighth Circuit Court of the United States of America, in and for the Kentucky district, pronounced at the November term, 1841, in a certain suit in Chancery, wherein the said Robert Porterfield was complainant, and the said Meriwether L. Clarke and others were defendants:

Now if the above bound Robert Porterfield shall well and truly prosecute the said appeal with effect—or, on failure thereof, pay to said Meriwether L. Clarke and others all costs and damages that may be awarded against him, the said Robert Porterfield, then the above obligation to be void, otherwise to remain in full force and virtue.

ROBERT PORTERFIELD, [L. S.]
By O. G. CATES, Att'y.
J. R. ALEXANDER. [L. S.]

Witness:
N. P. PORTER, Jr., *D. C.*

UNITED STATES OF AMERICA,
Eighth Circuit, Kentucky District, sct.

I, John H. Hanna, Clerk of the Eighth Circuit Court of the United States of America in and for the Kentucky district, do hereby certify, that the within and foregoing bond is a true copy from the original now on file in my office, in the suit of Robert Porterfield against Meriwether L. Clark and others, decided at the November term, 1841, of said court.

In testimony whereof, I have hereto subscribed my name, and affixed the seal of said court, this 20th day of [L. S.] December, 1841, and in the 66th year of our independence.

JNO. H. HANNA, *C. C. C. K. D.*
By N. P. PORTER, Ju'r. *D. C.*

The following are the exhibits filed and referred to by the complainant and defendants in this cause, to wit:

Robert Porterfield's survey of 1333⅓ acres, to wit:

Exhibit A, in Bill.

No. 304—1333⅓ Acres.

[Here follows plat.]

Surveyed for Robert Porterfield, assignee, 1333⅓ acres of land, by virtue of an entry made August 9th, 1784, on part of a military warrant, No. 799, in the district set apart for the officers and soldiers of the Virginia State line, west of the Tennessee river—beginning at the Ohio river at a black walnut, box-elder, and hackberry on the bank, and two maples and an ash on the sand-beach, upper corner of his 1200 acre survey; thence with a line of the same S. 30 W. 270 poles, to three hickories and a red-oak, corner of said 1200 acre survey in Bradley's line; and with the same S. 62 E. 45 poles to Bradley's corner—a red-oak sapling, a hickory, and red-oak trees; S. 28 W. 320 poles with Bradley's line to his south-east corner—two white-oak trees and a post-oak sapling; thence S. 62 E. 364 poles, to three red-oaks and a post-oak in Montgomery's line, near a pond; thence with his line N. 39 W. 86 poles, crossing a branch of Cross Creek, to two black-oaks and two post-oaks, near a branch of said creek—Montgomery's corner N. 51 E. 400 poles, to a white oak, red-oak, locust and elm on the bank of the river, and a cotton-wood and maple on the beach, Montgomery's lower corner

of his withdrawn entry; thence down the river with its several meanders, and binding thereon at low-water mark, to the beginning: the above courses run according to the true meridian.

RICHARD TAYLOR, Jr., *S.*
WILLIAM HERRING, *Marker.*
JOHN E. TAYLOR, } *C. C.*
BENJ. RAMMAGE, }

May 4th, 1824.

Examined and recorded May 18th, 1824.

RICHARD TAYLOR, Jr., *S.*
A copy—att: JAMES ROBERTSON, *R. L. O.*
By RICH'D. LONG, *D. R.*

Exhibit B, with Bill.

No 164—1200 Acres.

[Here follows plat.]

Survey for Robert Porterfield, heir, 1200 acres land, by virtue of an entry made August 5th, 1784, on part of a military warrant, No. 58, in the district set apart for the officers and soldiers of the Virginia State line, west of the Tennessee river—beginning at three maples, a cotton-wood and three willows, at the mouth of Delaware creek, the first creek emptying into the Ohio river below the island at the mouth of Tennessee river, at the distance of about four and a half miles below the lower point of said island; thence running up the creek, and binding on the same S. 45 W. 24 poles, S. 39 E. 8 poles, S. 62½ E. 29 poles, S. 38 E. 19½ poles, S. 17½ E. 34 poles, S. 48½ E. 24 poles, S. 73 E. 16 poles, E. 12 poles, S. 55 E. 16 poles, S. 31 E. 26 poles, S. 50 E. 20 poles, S. 53 E. 72 poles, S. 61 E. 210 poles, E. 16 poles, N. 71 E. 20 poles, S. 19½ E. 20 poles, to the mouth of a slough; S. 13 W. 6 poles, crossing the slough or lake; S. 22 W. 16 poles, S. 70 W. 12 poles, S. 87 W. 15 poles, S. 23 E. 11 poles, N. 67½ E. 26 poles, S. 63 E. 16½ poles, S. 52½ E. 19 3-10 poles, S. 48½ W. 22 poles, S. 8½ E. 19 poles, N. 58½ E. 16 poles, S. 54 E. 19 poles, S. 27½ E. 39 poles, to two hickories, two sweet gums, two birches, and a red-oak on the bank of said creek, common corner to said Porterfield and James Bradley; thence with Bradley's line S. 62 E. 420 poles, passing through an improvement formerly occupied by the widow Evans, to three hickories and a red-oak on said Bradley's line; N. 30 E. 270 poles, to a black-walnut, box-elder, and hackberry on the bank of the Ohio river, and two maples and an ash on the beach; thence down the river

with its several meanders, and binding thereon at low-water mark, to the beginning.

The above courses run according to the true meridian.

RICHARD TAYLOR, Jr., *S.*

Examined and recorded the 18th day of May, 1824.

WILLIAM HERRING, *Marker.*

May 1st, 1824.

BENJAMIN RAMAGE, JOHN E. TAYLOR, } *C. C.*
RICHARD TAYLOR, Jr., *S.*

A copy—attest: JAMES ROBERTSON, *R. L. O.*
By RICH'D. LONG, *D. R.*

Exhibit C, filed with Bill.

1200 Acres—No. 317.

[Here follows plat.]

November 21st, 1825.

Surveyed for Robert Porterfield 1200 acres of land, by virtue of an entry made August the 9th, 1784, No. 317, on part of a military warrant, No. 58, south of the Tennessee river, in the district set apart for the officers and soldiers of the Virginia State line—beginning on Delaware creek at James Currie's upper corner of his survey, No. 320, two maples, a birch, and a mulberry; thence N. 27° west, with said Currie's line 500 poles, to three black-oaks and three white-oak saplings; thence S. 22½ west 480 poles, to 3 post-oaks, corner to Robert Porterfield's survey of 1200 acres, No. 319; thence with said Porterfield's line, S. 27° E. 500 poles, to two red-oaks, a dog-wood and white-oak, impending over a spring, another corner to said Porterfield's survey of 1200 acres, No. 319; thence down Delaware or Perkins' creek, with its meanders, 480 poles, when reduced to a straight line, to the beginning. Run by the true meridian: the magnetic 7½ east.

JOHN E. TAYLOR, *D. S.*

Examined and recorded.

RICH'D. TAYLOR, Ju'r., *S.*
JOHN GIBSON, WILLIAM GIBSON, } *C. C.*
SAM'L. GIBSON, *M.*

A copy—att: JA'S. ROBERTSON, *R. L. O.*
By O. A. McCURDY, *D. R.*

Exhibit D, filed with Bill.

R. Porterfield, 1200 Acres—No. 394.

[Here follows plat.]

December 27th, 1825.

Surveyed for Robert Porterfield 1200 acres of land, by virtue of an entry made August 10th, 1784, No. 394, on part of a military warrant, No. 58, south of Tennessee river, in the district set apart for the officers and soldiers of the Virginia State line—beginning at four red-oaks; thence with John Baytop's line of his survey of 1666⅔ acres, No. 392, on Hunting creek, N. 58, west 480 poles, to a white-oak, post-oak, and red-oak, crossing Willow creek at 106 poles; thence N. 32 E. 400 poles, to a stake passing a cotton-wood marked R P, at 312 poles, and 3 willows marked as corners at 330 poles; thence S. 58 E. 480 poles, to two sweet-gums and a hickory; thence S. 32 W. 400 poles to the beginning. Run by true meridian: the magnetic 7½ degrees east.

JOHN E. TAYLOR, *D. S.*

Examined and recorded January 4th, 1826.

RICH'D. TAYLOR, Ju'r., *S.*
WILL. GRIMES & JAMES GRIMES, } *C. C.*
JAMES HEARN, *M.*

A copy—attest: JAMES ROBERTSON, *R. L. O.*
By E. A. MACURDY, *D. R.*

Exhibit E, filed with Bill.

R. Porterfield, 1200 Acres—No. 319.

[Here follows plat.]

November 2d, 1825.

Surveyed for Robert Porterfield 1200 acres of land, by virtue of an entry made August 9th, 1784, No. 319, on part of a military warrant, No. 58, south of Tennessee river, in the district set apart for the officers and soldiers of the Virginia State line—beginning at Robert Porterfield's upper corner of his entry, No. 317, on Dela-

ware creek, two red-oaks, a dog-wood, and white-oak sapling impending over a spring; thence N. 27 W. 500 poles, with said Porterfield's line, to three post-oaks, common corner to said Porterfield's survey, No. 317 and 319; thence S. 63 W. 384 poles, to two poplars and a hickory; thence S. 27 E. 500 poles, to two white-oaks, a hickory, and elm, and dog-wood, on a small drain; thence N. 63 E. 384 poles, to the beginning. Run by the true meridian: the magnetic 7½ degrees east.

JOHN E. TAYLOR, *D. S.*
Examined and recorded, January 4th, 1826.
RICHARD TAYLOR, Ju'r., *S.*
JOHN GIBSON & WILL. GIBSON, *C. C.*
SAMUEL GIBSON, *M.*
A copy—attest: JAMES ROBERTSON, *R. L. O.*
By E. A. MACURDY, *D. R.*

The following are the Exhibits, marked No's. 1 and 2, referred to in complainant's bill, to wit:

Exhibit No. 1.

Land-Office Military Warrant, No. 799.

To the Principal Surveyor of the land set apart for the officers and soldiers of the Commonwealth of Virginia.

This shall be your warrant to survey and lay off in or more surveys for Thomas Quarles, his heirs or assigns, the quantity of two thousand six hundred and sixty-six and ⅔ acres of land, due unto the said Thomas Quarles, in consideration of his services for three years as a lieutenant in the State line, agreeably to a certificate from the Governor and Council, which is received into the land office.

Given under my hand and seal of the said office, this 13th day of
[L. S.] June, in the year of our Lord one thousand seven hundred and eighty-three.

JOHN HARVIE, *R. L. Off.*
A copy—attest: JAMES ROBERTSON, *R. L. O.*
By RICH'D. LONG, *D. R.*

(Endorsement on the foregoing Exhibit,) to wit:

For a valuable consideration to me in hand paid, I do hereby

assign and make over to Robert Porterfield, all my right, title, and interest of the within land-warrant, to him and his heirs forever.

As witness my hand and seal, this 6th Dec'r, 1785.

THOMAS QUARLES, [L. S.]

Test:
LEWIS JOHNSON,
WILLIAM VAWTER.

A copy—attest: JAMES ROBERTSON, *R. L. O.*
By RICH'D. LONG, *D. R.*

Exhibit No. 2.

Land-Office Military Warrant, No. 58.

To the Principal Surveyor of the land set apart for the officers and soldiers of the Commonwealth of Virginia.

This shall be your warrant to survey and lay off in one or more surveys for Robert Porterfield, heir at law to Lieutenant Col. Charles Porterfield, dec'd., his heirs or assigns, the quantity of six thousand acres of land, due unto the said Robert Porterfield, heir at law to Lieutenant Col. Charles Porterfield, dec'd., in consideration of his military services for three years as a lieutenant colonel, agreeably to a certificate from the Governor and Council, which is received into the land office.

Given under my hand and seal of the said office, this 18th day [L. S.] of December, in the year of our Lord one thousand seven hundred and eighty-two.

JOHN HARVIE, *R. L. Off.*

A copy—attest: JAMES ROBERTSON, *R. L. O.*
By RICHARD LONG, *D. R.*

The following are the Exhibits, No's. 3, 4, 5, 6, 7, 8, 9, 10, and 11, referred to in complainant's bill, to wit:

Exhibit No. 3.

August 9th, 1784.

No. 304.—Robert Porterfield makes the following amendment to his entry, No. 304, of 1333⅓ acres—beginning at said Porterfield's upper corner, on the Ohio, of his entry, No. 164, for 1200 acres; running up the Ohio to James Montgomery's entry, No. 170; running with said Montgomery's lower line to his S. W. corner; running with his back line, and with Thomas Clay's N. W. line, No. 212, so far as a line running from the beginning with the upper line of his former entry, and with the line of James Bradley's entry, No. 183; running at right angles from Bradley's upper line, to close in Clay's line, will include the quantity.

A copy—attest: JAMES ROBERTSON, *R. L. O.*
By E. A. MACURDY, *D. R.*

August 9th, 1784.

No. 319.—Robert Porterfield enters 1200 acres of land, part of a military warrant, No. 58—beginning at said Porterfield's upper corner of his entry, No. 317, on Delaware creek; running with the back line of said entry 500 poles; thence at right angles for quantity.

A copy—attest: JAMES ROBERTSON, *R. L. O.*
By E. A. MACURDY, *D. R.*

Exhibit No. 4.

August 4th, 1784.

No. 164.—Robert Porterfield, heir, enters 1200 acres, part of a military warrant, No. 58—beginning on the Ohio, at the mouth of Delaware creek, on the upper side; running up the creek 600 poles, when reduced to a right line; thence at angles eastwardly, and with the river for quantity.

A copy—attest: JAMES ROBERTSON, *R. L. O.*
By E. A. MACURDY, *D. R.*

August 7th, 1784.

No. 304.—Robert Porterfield, ass'ee, enters 1333¼ acres on part of a military warrant, No. 799—beginning at Harper's S. west corner of an entry, No. 175, on Porterfield's line; running southwardly with Porterfield's line to James Bradley's line; thence eastwardly with Bradley's line to the corner; thence southwardly with said Bradley's line to S. E. corner thereof; thence at angles, so far, that a line to Harper's corner will include the quantity.

A copy—att: JAMES ROBERTSON, *R. L. O.*
By E. A. MACURDY, *D. R.*

Exhibit No. 5.

August 7th, 1784.

No. 317.—Robert Porterfield, heir, enters 1200 acres on part of a military warrant, No. 58—beginning with the northeast corner of his entry, No. 304; running southwardly with his upper, or eastward line, to the upper, or southeast corner thereof; then eastwardly so far, that a line northwardly parallel with the first, will include the quantity.

A copy—attest: JAMES ROBERTSON, *R. L. O.*
By E. A. MACURDY, *D. R.*

August 10th, 1784.

No. 394.—Robert Porterfield enters 1200 acres, part of a military warrant, No. 58—beginning at the S. E. corner of John Baytop's entry, No. 392, on Hunting creek; running with said Baytop's line 500 poles; thence at right angles for quantity.

A copy—attest: JAMES ROBERTSON, *R. L. O.*
By E. A. MACURDY, *D. R.*

Exhibit No. 6.

August 9th, 1784.

No. 358. Gregory, 1000 acres, part of a military warrant, No. 124—beginning at the mouth of Hunting creek, and running down the Ohio 400 poles, when reduced to a straight line; thence at right angles from the river for quantity.

A copy—attest: JAMES ROBERTSON, *R. L. O.*
By E. A. MACURDY, *D. R.*

Exhibit No. 7.

August 7th, 1784.

No. 320.—James Currie, ass'ee, enters 866⅔ acres, on part of a military warrant, No. 1417—beginning at the upper corner of Clement Biddle's 1000 acre entry, No. 316, on the lower side of Delaware creek; running up the creek 400 poles on a straight line; thence out at angles, and parallel to Biddle's upper line, for quantity.

A copy—attest: JAMES ROBERTSON, *R. L. O.*
By E. A. MACURDY, *D. R.*

Exhibit No. 8.

August 10th, 1784.

No. 366.—James Quarles enters 1333⅓ acres of land, on a military warrant, No. 150—beginning at Windsor Brown's corner, on the upper side of Hunting creek; running with his line to his S. E. corner; thence at angles parallel to, and with the general course of the creek, so far as shall include the quantity.

A copy—attest: JAMES ROBERTSON, *R. L. O.*
By E. A. MACURDY, *D. R.*

August 3d, 1784.

No. 81.—Windsor Brown enters 1000 acres, part of a military warrant, No. 195—beginning at the mouth of the north fork of Clark's river, extending up both sides of said fork twice as long as wide, for quantity.

A copy—attest: JAMES ROBERTSON, *R. L. O.*
By E. A. MACURDY, *D. R.*

Exhibit No. 9.

August 7th, 1784.

No. 316.—Clement Biddle, ass'ee, enters 1000 acres on sundry military warrants—beginning at the mouth of Delaware creek, on the lower side; running down the river Ohio 240 poles, when re-

duced to a right line, and up the creek from its mouth for quantity.

A copy—attest:

JAMES ROBERTSON, *R. L. O.*
By E. A. MACURDY, *D. R.*

August, 10, 1784.

No. 392.—John Baytop enters 1666⅔ acres, part of a military warrant, No. 1565—beginning at the north-west corner of James Quarles' entry of 1333⅓ acres, No. 366, on Hunting creek, and running with Gregory Smith's back line, 500 poles; thence parallel with, and binding on the creek for quantity.

A copy—attest:

JAMES ROBERTSON, *R. L. O.*
By E. A MACURDY, *D. R.*

Exhibits—No's 10 and 11.

August, 5, 1784.

183.—James Bradley enters 1000 acres, part of military warrant, No. 2665—beginning at the upper corner of Robert Porterfield's (heir) entry, No. 164, on Delaware creek; running up the creek, 400 poles on a straight line; thence at angles eastwardly, parallel with Porterfield's upper line, on the creek, for quantity.

A copy—attest:

JAMES ROBERTSON, *R. L. O.*
By E. A. MACURDY, *D. R.*

August, 5*th*, 1784.

170.—James Montgomery enters 1000 acres, part of a military warrant, No. 2677—beginning at the mouth of Tennessee, centerring at the mouth of a creek, including a tree branded thus, G. H.; running up the Tennessee, and along the Ohio; and thence at right angles as the law directs for quantity.

A copy—attest:

JAMES ROBERTSON, *R. L. O.*
By E. A. MACURDY, *D. R.*

Exhibits.

The following are the exhibits referred to in complainant's bill, as marked, "F. and G." to wit:

Lease—Porterfield to Daniel.

This indenture, made this 8th day of May, 1824, between Robert Porterfield, of the County of Augusta, and State of Virginia, by John S. Herring, his attorney in fact, of the one part, and Joseph Daniel, of the County of Hickman, and State of Kentucky, of the other part, witnesseth: that the parties aforesaid do hereby covenant and agree with each other as followeth, to wit:

The said Porterfield, on his part, doth hereby lease and to farm let, to the said Daniel, for the term of five years from the date hereof, unless the said lease shall be sooner determined, in the manner hereinafter set forth, a certain tract of land lying at the mouth of Tennessee river, in the county aforesaid, containing one thousand three hundred and thirty-three and one-third acres, and bounded as followeth, to wit: Beginning on the bank of the Ohio river, at a box-elder and hackberry, on the bank, and two maples and an ash, on the beach; marked as a corner of said Porterfield's survey, of his military entry, No. 304, and running with the boundary of said survey, S. 30° W. 270 poles, to three hickories and a black oak, in James Bradley's line, S. 62° E. 45 poles, to a red oak sapling, a hickory and a red oak trees; S. 28° W. 320 poles, to two white oak trees, and a post oak sapling, Bradley's corner, N. 62° E. 464 poles, to three red oaks and a post oak, by a pond, N. 39° W. 86 poles, to two black oaks and two post oaks, near a branch of cross creek; N. 51° 400 poles, to a red oak, locust and elm on the bank of Tennessee river, and cotton-wood and maple, on the beach; thence down the Tennessee and Ohio, with their meanders at low water mark to the beginning; except so much of the said tract of land hereby leased, as the said Porterfield hath heretofore or shall hereafter, by written contract, lease to some other tenant.

And the said Porterfield doth further covenant with the said Daniel, that the said Daniel shall hold for the term of fifteen years from the date hereof, to be used for the purpose of erecting and keeping a ware-house thereon, so much of the aforesaid tract of land, as is contained within the following boundaries, to wit: beginning at a stump standing opposite the lower end of the house in which said Daniel now lives, between said house and the river, forty feet from the end of said house, and running thence south, thirty degrees east, by the true meridian sixty feet, to a stump, and extending at right angles from each end of the said line to the river, at low water mark.

And the said Porterfield covenants, that the said Daniel shall have exclusive use and occupation for five years from the date hereof, of all that part of the aforesaid tract, which is now cleared and in possession of the said Daniel, extending from the upper end of the part of said tract, which hath been leased to William L. Hickerson, up the Tennessee river, to the mouth of the first

branch or drain emptying into the river above said Daniel's house, and extending out from the river, at right angles, to the general course of the river, so far as will include fifty acres.

But the said Porterfield reserves hereby, to himself, the right to dispose of or re-enter and take possession, at any time he may deem proper, of all and every part of the said tract of one thousand three hundred and thirty-three and one third acres, except the fifty acres last described, and that part hereinbefore leased, for the term of fifteen for the use of a ware-house, the use and occupation of which is hereby confirmed to the said Daniel, for the respective terms hereinbefore set forth.

And the said Porterfield doth hereby further covenant with the said Daniel, that he will indemnify and save harmless him, the said Daniel, against all costs and damages, to which he, the said Daniel, may be subjected, in defending himself by all legal means in possession of the land hereby leased.

But it is understood and agreed by the parties, that if the said Daniel shall be evicted and turned out of possession of the said land, by a title superior to the said Porterfield's, in that event the said Porterfield shall not be liable to pay to the said Daniel any thing in consideration of the value of his lease so lost.

And the said Joseph Daniel, on his part, doth hereby covenant with the said Porterfield, to take possession of and hold all the lands hereby leased as tenant under him, the said Porterfield, and by these presents doth surrender and give up to the said Porterfield, all interest, claim or right he may have in and to the possession of any part of the lands hereby leased, or any of its appurtenances not derived from the said Porterfield, and to keep and hold possession of the same against all the trespassers, intruders or claimers, until evicted by due course of law, and to deliver up peaceable possession of the same at the expiration of this lease.

And the said Daniel doth hereby further covenant, that he will not commit any waste upon the lands hereby leased, nor cut or permit to be cut or destroyed, any trees or timber upon any part of the lands hereby leased, except within the fifty acres herein before described.

And the said Daniel doth further covenant, in consideration of the said lease, that he will enclose with a good fence all the lands now cleared within his lease, and at the expiration of the term of said lease, will leave the same well enclosed with a good fence, and in good tenantable repair.

And the said Daniel for himself, his heirs and assigns, doth hereby covenant with the said Porterfield, that if he, the said Daniel, his heirs or assigns, shall make breach of any of the covenants herein contained, or shall fail to do and perform any one or all of the covenants, stipulations and agreements herein made on his part, that immediately thereafter this lease shall be determined forfeited

and made void, and the said Porterfield shall have a right forthwith to re-enter and take possession of all the lands hereby leased.

In witness whereof, the parties have signed and sealed this covenant, in duplicate, on the day and year first above written; the said Robert Porterfield, by his attorney in fact, the said John S. Herring; the said Joseph Daniel in person.

ROBERT PORTERFIELD, [L. S.]
By JOHN S. HERRING, *his Att'y in fact.*
JOSEPH DANIEL. [L. S.]

Signed and sealed in presence of
JOHN E. TAYLOR,
WILLIAM MILSPAUGH.

Lease—Porterfield to Wells.

Article of agreement this day made and entered into, between Robert Porterfield, of the county of Augusta and State of Virginia, by his attorney in fact, John S. Herring, of the one part, and Henry Wells, of the county of Hickman and State of Kentucky, of the other part, witnesseth: that the said Porterfield doth hereby lease and to farm let, for the term of five years, from the date hereof, to the said Wells, a certain tenement at the mouth of Tennessee river, being the same now occupied by the said Wells, with twenty acres of land adjacent thereto, bounded as followeth, to wit: beginning at a black on the bank of the river, at the lower end of the land leased by said Porterfield to William S. Hickerson, fourteen poles below the mouth of a small bayou, and running down the river sixty-two poles, and out with Hickerson's fence, and from the lower end parallel with it, so far as will include the quantity of twenty acres.

And the said Porterfield hereby agrees to indemnify and save harmless the said Wells, against all costs and damages which he, the said Wells, may sustain in defending himself by all legal means in possession of the land hereby leased.

But it is agreed and understood by the parties, that the said Porterfield shall not be liable to pay to the said Wells any thing in consideration of the value of this lease, if he, the said Wells, shall be evicted and turned out of possession by a title superior to said Porterfield's.

And the said Wells doth hereby surrender and yeald up to the said Porterfield, now present on the land, by his attorney, John S. Herring, all right, interest or claim which he may have in and to the possession of the land and tenement hereby leased, not derived from the said Porterfield; and he doth hereby covenant to take and hold possession of the land and tenement hereby leased, as the tenant of the said Porterfield.

And the said Wells doth hereby obligate himself, in consideration of said lease, to clear and enclose with a good fence, and leave at

the expiration of his lease the said twenty acres in good tenantable repair, and to pay for the same the annual rent of one cent.

And the said Wells doth further covenant, that he will not commit any waste or trespass upon any of the land claimed by the said Porterfield, adjoining the land hereby leased. But it is agreed, he may take therefrom fire-wood and timber for necessary repairs, for the use of the land leased to him.

And the said Wells doth hereby covenant, and these presents are upon the express condition, that if he, the said Wells, his heirs, executors, administrators or assigns, shall not well and truly observe and keep, according to their true intent and meaning, all and every the covenants, stipulations and agreements by him and them to be observed and kept, then and from thenceforth in either of the said cases, it shall and may be lawful for the said Robert Porterfield, his heirs or assigns, to re-enter into and upon the land and tenement hereby leased, or any part thereof, in the name of the whole, and the same to have again, re-possess, retain and enjoy in his or their former estate; and the said Wells, his heirs, executors, administrators or assigns, and all other tenants and occupiers of the said premises, thereout utterly to expel and remove, and that from and after such re-entry made, this lease shall determine and be utterly void, to all intents and purposes, any thing herein contained to the contrary notwithstanding.

In witness whereof the parties, the said by his attorney, the said John S. Herring, the said Henry in his own proper person have signed, and sealed this covenant in duplicate, this 8th day of May, 1824.

ROBERT PORTERFIELD, [L. S.]
By JOHN S. HERRING, *his Att'y in fact.*
HENRY WELLS. [L. S.]

Testit:
J. DANIEL,
JOHN E. TAYLOR,
WILLIAM MILSPAUGH.

Lease—Porterfield to Davis.

This indenture, made this 26th day of May, 1824, between Robert Porterfield, of the county of Augusta and State of Virginia, by his attorney in fact, John S. Herring, of the one part, and Nancy Davis, of the county of Hickman and State of Kentucky, of the other part, witnesseth: that the said Porterfield, for and in consideration of the rents and covenants hereinafter reserved and expressed, doth hereby lease, demise and to farm let, for the term of five years, from the date hereof, a certain tract or parcel of land, containing 1200 acres, lying on the Ohio river, below the mouth of Tennessee, and bounded as followeth, to wit: beginning at three

maples, a cotton wood and three willows, at the mouth of Delaware creek, the first emptying into the Ohio river, below the island at the mouth of Tennessee river, at the distance of about four and a half miles below the lower point of said island; thence running up said creek, and binding on the same, to two hickories, two sweet gums, two beaches and a red oak, on the bank of said creek, common corner to said Porterfield and James Bradley; thence with Bradley's line S., 62° E., 420 poles, passing through the improvement formerly occupied by the widow Evans, to three hickories and a red oak on said Bradley's line N., 30° E., 270 poles, to a black walnut, box-elder and hackberry, on the bank of the Ohio river, and two maples and an ash on the beach; thence down the river with its several meanders, and binding thereon at low water mark, to the beginning; to have and to hold the said demised tract of land with its appurtenances, to her, the said Nancy Davis, her heirs or assigns, for the term heretofore mentioned, unless said lease shall be sooner determined in the manner hereinafter set forth, except so much of the unenclosed woodland as the said Porterfield shall hereafter by written contract lease to some other tenant.

And the said Porterfield hereby agrees to indemnify and save harmless, the Davis, against all costs and damages which she, the said Davis, may sustain in defending herself by all legal means in possession of the land hereby leased.

But it is understood and agreed by the parties, that the said Porterfield shall not be liable to pay to the said Davis, any thing in consideration of the value of this lease, if the said Davis shall be evicted and turned out of possession by a title superior to said Porterfield's.

And the said Davis doth hereby surrender and yeald up to the said Porterfield, now present on the land, by his attorney, John S. Herring, all right, interest or claim which she may have in and to the possession of any part of the land hereby leased, not derived from the said Porterfield, and she doth hereby covenant to take and hold possession of the land hereby leased, as the tenant of the said Porterfield, and to deliver up peaceable possession at the termination of this lease; and the said Davis doth hereby obligate herself, in consideration of this said lease, to pay to the said Porterfield the annual rent of one cent, and to keep enclosed with a good fence all the land which is now cleared at the place lately occupied by her late husband, James Davis, and preserve the same in good order for cultivation; and also, to clear and put in good order for cultivation and enclose within a good fence, ten acres, at the place where the said Nancy Davis now lives, to begin ten poles lower down the river than where the house now occupied by her stands, and extending up between the river and the slough for the quantity of ten acres, excluding the sand banks on the river.

And the said Nancy Davis further covenants, to leave the said ten acres and the lands now cleared at the place lately occupied by

the said James Davis, deceased, at the expiration of this lease, in good tenantable repair.

And the said Davis doth hereby further covenant, that she will not cut or destroy any timber or trees upon said land, except what she necessarily uses on the farm she occupies, nor suffer any other person or persons to cut or destroy any timber or trees, or trespass upon or intrude into possession of any part of the land hereby leased.

And the Davis doth hereby covenant, and these presents are upon the express condition, that if she, the said Davis, her heirs, executors, administrators or assigns shall not pay the rents reserved when they become and well and truly observe and keep, according to their true intent and meaning, all and every the covenants, stipulations and agreements by her and them to be observed and kept, then and from thenceforth, in either of the said cases, it shall and may be lawful for the said Porterfield, his heirs, executors, administrators or assigns, or his lawful attorney, to re-enter upon the land hereby leased, or any part thereof, in the name of the whole, and the same to have again, re-possess, retain and enjoy in his or their former estate.

And the said Davis, her heirs, executors, administrators or assigns, and all other tenants and occupiers of the said demised premises, thereout utterly to expel and remove, and that from and after such re-entry made, this lease shall determine and be utterly void to all intents and purposes, any thing herein contained to the contrary notwithstanding.

And it is expressly agreed and understood by the parties, that the said Porterfield reserves to himself the right to re-enter and take possession or dispose of all or any part of the land hereby leased, at any time he may think proper, except such part of the same as is now cleared, and the ten acres before described, both of which is hereby confirmed to the said Nancy Davis, her heirs or assigns, for the term of five years as aforesaid.

In witness whereof, the parties aforesaid, the said Robert Porterfield, by his attorney in fact, the said John S. Herring and the said Nancy Davis, in her own proper person, have signed and sealed in duplicate this covenant, on the day and year first above written.

ROBERT PORTERFIELD, [L. S.]
By his Att'y in fact,
JOHN S. HERRING.

her
NANCY ⋈ DAVIS. [L. S.]
mark

Attest:
JOHN E. TAYLOR,
his
ISAAC ⋈ DAVIS.
mark

Porterfield to Hickerson—Lease.

This memorandum of an agreement made this 5th day of May, 1824, between Robert Porterfield, of the county of Augusta and State of Virginia, by his attorney in fact, John S. Herring, of the one part, and William L. Hickerson, of the county of Hickman and State of Kentucky, of the other part, witnesseth: that the said Porterfield doth hereby lease and to farm let, to the said Hickerson, for the term of five years from the date hereof, a certain parcel of land lying at the mouth of Tennessee river, in the said county of Hickman, being the tenement or close now occupied by the said Hickerson, estimated to contain thirty acres, and bounded by the river and the fence which encloses the said tenement now occupied by the said Hickerson, as it now stands.

And the Porterfield, by his said attorney, doth hereby covenant, to indemnify and save harmless the said Hickerson against all costs, damages and expenses to which the said Hickerson may be subjected, in defending himself by all lawful means in possession of the land hereby leased.

But it is agreed and understood by the parties, that the said Porterfield shall not be liable to pay the said Hickerson any thing in consideration of the value of the lease hereby made, if the said Hickerson shall be evicted by a title superior to the said Porterfield's.

And the said Porterfield agrees, that the said Hickerson may take from the lands of the said Porterfield, adjacent to the land hereby leased, fire-wood for his own use, and such timber as may be required for necessary repairs upon the premises.

The said William L. Hickerson, on his part, doth hereby covenant with the said Porterfield, to take possession and hold the land hereby leased, as tenant under said Porterfield.

And by these presents doth surrender and give up to the said Porterfield, all interest, claim or right which he may have in and to the possession of the land and tenement hereby leased, not derived from the said Porterfield, and to deliver up peaceable possession of the said land to said Porterfield at the expiration of this lease.

And the said Hickerson doth further covenant, that he will not commit any waste or trespass upon the lands claimed by the said Porterfield, adjacent to the lands hereby leased.

And the said Hickerson doth hereby further covenant for and in consideration of the said lease, that he will, before the first day of August, 1825, deaden all the timber upon the land now enclosed within his lease.

And the said Hickerson, for himself, his heirs or assigns, doth hereby covenant with the said Porterfield, that if the said Hickerson, his heirs or assigns, shall make breach of any of the covenants herein contained, or shall fail to perform all the stipulations herein

made on his part, that immediately thereupon this lease shall be forfeited and made void, and the said Porterfield shall have a right to re-enter and take possession of the land hereby leased.

In witness whereof, the parties have signed and sealed this covenant in duplicate, on the day and year first above written.

JNO. S. HERRING, *Att'y in fact for*
ROBERT PORTERFIELD. [L. S.]
WM. L. HICKERSON. [L. S.]

Signed and sealed in presence of
RICHARD TAYLOR, JR.
WM. S. HERRING.

The following grants were filed by the complainant as exhibits in this cause, to wit:

Grant to Robert Porterfield for 1200 acres.

Joseph Desha, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of a Virginia land office military warrant, No. 58, there is granted by this Commonwealth unto Robert Porterfield, a certain tract or parcel of land containing twelve hundred acres by survey, bearing date the first day of November, one thousand eight hundred and twenty-five, lying and being in the district set apart for the officers and soldiers of the Virginia State line, south of Tennessee river, and bounded as followeth, to wit: beginning on Delaware creek, at James Curvie's upper corner of his survey, No. 320, two maples, a birch and mulberry; thence N., 27° west, with said Curvie's line 500 poles, to three black oaks and three white oaks saplings; thence south, 22½° west, 480 poles, to three post oaks, corner to Robert Porterfield's survey of 1200 acres, No. 319; thence with said Porterfield's line south, 27° E., 500 poles, to two red oaks, a dog wood and white oak impending over a spring, another corner to said Porterfield's survey of 1200 acres, No. 319; thence down Delaware or Perkins' creek, with its meanders 480 poles, when reduced to a straight line, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land with its appurtenances, to the said Robert Porterfield and his heirs forever.

In witness whereof, the said Joseph Desha, Esq., Governor of the Commonwealth of Kentucky, hath hereunto set his hand and caused the seal of the said Commonwealth to be affixed at Frankfort, on the thirteenth day of July, in the year of our Lord one thousand eight hundred and twenty-six, and of the Commonwealth the thirty-fifth.

[L. S.]

By the Governor, JOSEPH DESHA.
J. C. PICKETT, *Sec'y.*

"Endorsement on the foregoing Grant."

Robert Porterfield has a title to the within tract of land.

JNO. M. FOSTER, *R. S. O.*

Grant to Robert Porterfield for 1,200 acres.

John Adair, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of part of Virginia Land Office Military Warrant, No. 58, entered the 12th day of August, 1784, there is granted by the said commonwealth, unto Robert Porterfield, a certain tract, or parcel of land, containing one thousand two hundred acres, by survey, bearing date the thirteenth day of May, one thousand eight hundred and twenty-one, lying and being in the district set apart for the officers and soldiers of the Virginia State line, west of the Tennessee river, on the waters of Mayfield creek, and bounded as followeth, to wit: beginning at the north-east corner of William Campbell's entry, No. 377, and N. W. corner of Matthew Wright's survey, of 500 acres, at two black oaks and hickory, in section 13, to 4 N. R. 3 W.; thence N. 72° W. 158 poles, a branch, which bears northwardly 320 poles, a drain bears n'ly 380 poles, a drain 400 poles, to two small black gums, hickory and dogwood, near a small branch in a line of John Williams' survey of his entry, No. 385, in section 14, T. 4, N. R. 3 W.; thence N. 18° east 260 poles, passing Williams' N. E. corner 450 poles; a run bears eastwardly 480 poles, to a gum, black oak, white oak and dogwood, in section No. 2, T. 4, north range 3 W.; thence S. 72°, east 56 poles; a branch bears n'erly 384 poles; a run bears N. E. 400 poles, to a small gum and small white oak; a white oak and hickory in section 12, T. 4, N. R. 3 W.; thence S. 18° west; a drain bears westwardly 480 poles, to the beginning, with its appurtenances; to have and to hold the said tract or parcel of land, with its appurtenances, to the said Robert Porterfield, and his heirs, forever.

In witness whereof, the said John Adair, Esquire, Governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed, at Frankfort, on the 21st day of May, in the year of our Lord one thousand eight hundred and twenty-four, and of the commonwealth the thirty-second.

By the Governor:

JOHN ADAIR. [L. S.]

THOMAS B. MONROE, *Secretary.*

Endorsement.

Robert Porterfield has a title to the within tract of land.
JNO. M. FOSTER, *Reg. L. Off.*
By JAMES Y. LOVE, *Dep. Reg.*

Grant to Robert Porterfield, for 1333⅓ acres.

Joseph Desha, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that by virtue of part of a Land Office Military Warrant, No. 799, entered August 9th, 1784, there is granted by the said commonwealth, unto Robert Porterfield, assignee of Thomas Quarles, a certain tract, or parcel of land, containing thirteen hundred thirty-three and a third acres, by survey, bearing date the 4th day of May, one thousand eight hundred and twenty-four, lying and being in the district set apart for the officers and soldiers of the Virginia State line, west of the Tennessee river, and bounded as followeth, to wit: Beginning on the Ohio river at a black walnut, box-elder and hackberry on the bank, and two maples and an ash on the sand beach, upper corner of his 1200 acre survey; thence with a line of the same S. 30 W. 270 poles, to three hickories and a red oak, corner of said 1200 acre survey, in Bradley's line, and with the same S. 62° 45 poles, to Bradley's corner, a red oak sapling, a hickory and red oak trees, S. 28°, W. 320 poles, with Bradley's line, to his S. E. corner, two white oak trees and a post oak sapling; thence S. 62° E. 364 poles, to three red oaks and a post oak, in Montgomery's line, near a pond; thence with his line N. 39° W. 86 poles, crossing a branch of Brass creek to two black oaks and two post oaks, near a branch of said creek, Montgomery's corner, N. 51 E. 400 poles to white oak, red oak, locust and elm, on the bank of the river, and a cotton wood and maple on the beach, Montgomery's lower corner of his within entry; thence down the river, with its several meanders, and binding thereon at low water mark, to the beginning, with its appurtenances; to have and to hold the said tract, or parcel of land, with its appurtenances, to the said Robert Porterfield and his heirs, forever.

In witness whereof, the said Joseph Desha, Esq., Governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said Common-
[L. S.] wealth to be affixed, at Frankfort, on the fifth day of April, in the year of our Lord one thousand eight hundred and twenty-five, and of the commonwealth the thirty-third.

By the Governor,

JOS. DESHA.
J. C. PICKETT, *Secretary.*

Endorsement.

Robert Porterfield has a title to the within tract of land.
JNO. M. FOSTER, *R. L. O.*

Grant to Robert Porterfield for 1200 acres.

Joseph Desha, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of part of a Land Office Military Warrant, No. 58, entered 5th August, 1784, there is granted by the said commonwealth, unto Robert Porterfield, heir, a certain tract, or parcel of land, containing twelve hundred acres, by survey, bearing date the first day of May, one thousand eight hundred and twenty-four, lying and being in the district set apart for the officers and soldiers of the Virginia State line, west of the Tennessee river, and bounded as followeth, to wit: Beginning at three maples, a cotton wood and three willows, at the mouth of Delaware creek, the first creek emptying into the Ohio river, below the island, at the mouth of Tennessee river, at the distance of about $4\frac{1}{2}$ miles below the lower point of said island; thence running up the creek and binding thereon on the same, S. 45° W. 24 poles, S. 39° E. 8 po., S. $62\frac{1}{2}$°, E. 29 po., S. 38, E. $19\frac{1}{2}$ po., S. $17\frac{1}{2}$, E. 34 po., S. $48\frac{1}{2}$, E. 24 po., S. 73, E. 16 po., E. 12 po., S. 55, E. 16 po., S. 31, E. 26 po., S. 50, E. 20 po., S. 53, E. 72 po., S. 61, E. 210 po., E. 16 po., N. 71, E. 20 po., S. $19\frac{1}{2}$, E. 20 po., to the mouth of a slough, S. 13, W. 6 poles, crossing the slough, or lake, S. 22, W. 16 poles, S. 70, W. 12 poles, S. 87, W. 15 poles, S. 25, W. 11 poles, N. $67\frac{1}{2}$, E. 26 poles, S. 63°, E. $16\frac{1}{2}$ poles, S. $52\frac{1}{2}$, E. $19\frac{3}{10}$ po., S. $48\frac{1}{2}$, W. 22 po., S. $8\frac{1}{2}$, E. 19 po., N. $58\frac{1}{2}$, E. 16 po., S. 54, E. 19 po., S. $27\frac{1}{2}$, E. 39 poles, to two hickories, two sweet gums, two birches, and a red oak on the bank of said creek, common corner to said Porterfield and James Bradley; thence with Bradley's line S. 62°, E. 420 poles, passing through an improvement formerly occupied by the widow Evans, to three hickories and a red oak on said Bradley's line, N. 30, E. 270 poles, to a black walnut, box-elder and hackberry, on the bank of the Ohio river, and two maples and an ash on the beach, thence down the river, with its several meanders, and binding thereon, at low water mark, to the beginning. The above courses run according to the true meridian, with its appurtenances. To have and to hold the said tract, or parcel of land, with its appurtenances, to the said Robert Porterfield, and his heirs, forever.

In witness whereof, the said Joseph Desha, Esq., Governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed, at Frankfort, on the fifth day of April, in the year of our Lord one thousand eight hundred and twenty-five, and of the commonwealth the thirty-third.

[L. S.]

By the Governor,

JOS. DESHA.
J. C. PICKETT, *Secretary.*

Endorsement.

Robert Porterfield has a title to the within tract of land.

JNO. M. FOSTER, *R. L. O.*

Grant to Robert Porterfield for 1200 acres.

Joseph Desha, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of a Virginia Land Office Military Warrant, No. 58, entered August 10th, 1784, there is granted by the said commonwealth, unto Robert Porterfield, a certain tract, or parcel of land, containing twelve hundred acres, by survey, bearing date the twenty-seventh day of December, one thousand eight hundred and twenty-five, lying and being in the district set apart for the officers and soldiers of the Virginia State line, south of the Tennessee river, and bounded as followeth, to wit: Beginning at four red oaks, thence with John Baytop's line of his survey, of 1,666⅔ acres, No. 392, on Hunting creek, N. 58°, W. 480 poles, to a white oak, post oak and red oak, crossing Willow creek at 106 poles; thence N. 32°, E. 400 poles, to a stake passing a cotton wood marked A. P., at 312 poles, and 3 willows marked as corners, at 330 poles; thence S. 58°, E. 480 poles, to two sweet gums and a hickory; thence S. 32° W. 400 poles to the beginning, with its appurtenances; to have and to hold the said tract, or parcel of land, with its appurtenances, to the said Robert Porterfield, and his heirs, forever.

In witness whereof, the said Joseph Desha, Esq., Governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said commonwealth to be affixed, at Frankfort, on the thirteenth day of July, in the year of our Lord one thousand eight hundred and twenty-six, and of the commonwealth the thirty-fifth.

[United we stand, divided we fall.]

By the Governor,

JOS. DESHA.
J. C. PICKETT, *Secretary.*

"Endorsement."

Robert Porterfield has a title to the within tract of land.
JNO. M. FOSTER, *R. L. O.*

Patent to Geo. R. Clarke, for 36,962 acres.

Isaac Shelby, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of 14 Land Office Treasury Warrants, Nos. 1,294, 1,295, 1,296, 1,297, 1,298, 1,299, 1,300, 1,301, 1,302, 1,303, 1,304, 1,305, 1,306 and 1826, there is granted by the said commonwealth, unto Brig'r Gen'l George Rogers Clarke, a certain tract, or parcel of land, containing thirty-six thousand nine hundred and sixty-two acres, by survey, bearing date the 7th day of June, one thousand seven hundred and eighty-four, lying and being in Lincoln county, and on the Ohio, beginning at three maples, two *ash's* and a hackberry, on the bank of the Ohio, at the mouth of Tennessee river, running from thence south 16°, west 1,280 poles, crossing a creek, to two white oaks and three maples standing on the bank of the creek that empties in the Ohio, at the lower end of the island, at the mouth of Tennessee; thence N. 74°, west 3,840 poles, crossing a fork of Massac creek at 1,830 poles, another at 2,340 poles, a branch at 3,000 poles, and another at 3,396 poles, to five black oak saplings, in the head of a hollow running north, near the top of a high ridge; thence N. 16°, east 1,800 poles, crossing a branch of Four Mile creek, and a pond, to a black walnut, elm and hoop-wood on the bank of the Ohio, about 3 miles below Fort Massac; thence running up the Ohio, with its meanders, 4,480 poles, to the beginning, with its appurtenances; to have and to hold the said tract, or parcel of land, with its appurtenances, to the said Brig'r Gen'l Geo. R. Clarke, and his heirs, forever.

In witness whereof, the said Isaac Shelby, Esq., Governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said common-
[L. S.] wealth to be affixed, at Frankfort, on the 15th day of September, in the year of our Lord one thousand seven hundred and ninety-five, and of the commonwealth the fourth.

By the Governor,

ISAAC SHELBY.
JAMES BROWN, *Secretary.*

A copy—Attest:
JNO. M. FOSTER, *R. L. O.*
By E. A. MACURDY, *D. R.*

Copy, Patent to Geo. R. Clarke, for 37,000 acres.

Isaac Shelby, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of twenty-five Land Office Treasury Warrants, Nos. 1,307, 1,308, 1,309, 1,310, 1,311, 1,314, 1,815, 1,816, 1,817, 1,818, 1,819, 1,820, 1,821, 1,822, 1,823, 1,824, 1,825, 1,827, 1,828, 1,829, 1,830, 1,831, 1,832, 1,833, 1,834, and 1,835, there is granted by the said commonwealth, unto Brig'r Gen'l George Rogers Clark, a certain tract, or parcel of land, containing thirty-seven thousand acres, by survey, bearing date the 8th day of June, one thousand seven hundred and eighty-four, lying and being in Lincoln County, and on the Ohio, and bounded as followeth, to wit: Beginning at a black walnut, elm and hoop-wood, standing on the bank of the Ohio, and corner to his former survey, of 36,962 acres, running from thence down with the several meanders of the Ohio, N. 55°, west 104 po., N. 70°, W. 194 po., N. 56°, west 126 poles, N. 70°, west 320 poles, N. 65°, west 88 poles, N. 75°, W. 224 poles, N. 70, W. 450 poles, N. 80, W. 704 poles, N. 85°, W. 80 poles, N. 80°, west 236 poles, west 290 poles, S. 85°, west 160 poles, S. 77°, W. 320 poles, S. 70°, west 210 poles, S. 55°, west 320 poles, S. 40°, west 534 poles, to two maples and a cotton wood tree standing at the lower side of a small creek, and the fifth below Massac fort and creek, and corner to George Smith; running from thence with his line S. 58°, E. 2,166 poles to his corner, at a white oak and hickory, by a small drain; running west thence S. 74°, E. 1,758 poles, to five black oak saplings, the south-west corner of his former survey; thence with his line N. 16°, east 1,800 poles, to the beginning, with its appurtenances; to have and to hold the said tract, or parcel of land, with its appurtenances, to the said Brig'r Gen'l George R. Clarke, and his heirs, forever.

In witness whereof, the said Isaac Shelby, Esq., Governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said common-
[L. S.] wealth to be affixed, at Frankfort, on the 15th day of September, in the year of our Lord one thousand seven hundred and ninety-five, and of the commonwealth the fourth.

By the Governor,

ISAAC SHELBY.
JAMES BROWN, *Secretary*.

A copy—Attest:
By JOHN M. FOSTER, *R. L. O.*
E. A. MACURDY, *D. R.*

Treaties with Indians.

To all to whom these presents shall come:

I, Thomas Johnson, Lord Mayor of the City of London, do hereby

certify, that on the day of the date hereof, personally came and appeared before me, Henry Sewell, the deponent named in the affidavit hereunto annexed, being a person well known, and worthy of good credit, and by solemn oath, which the said deponent then took before me, upon the Holy Evangelists of Almighty God, did solemnly and sincerely declare, testify and depose to be true, the several matters and things mentioned and contained in the said annexed affidavit.

In faith and testimony whereof, I, the said Lord Mayor, have caused the seal of the office of the said City of London to be hereunto put and affixed, and the several papers, [L. S.] or writings, mentioned and referred to in and by the said affidavit, to be hereunto also annexed. Dated in London, the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and forty-one.

REYNAL.

Henry Sewell, clerk to Messieurs. Amory, Sewell & Moores, of Throgmorton street, in the City of London, gentleman, maketh oath and saith, that he did, on the twentieth day of July, instant, at Her Majesty's State Paper Office, London, compare the several papers, or writings, hereunto annexed, with the several documents of which they purport to be copies, now deposited and remaining in her majesty's said state paper office, that is to say, such of the said papers, or writings, as purport to be copies of original documents, with such original documents, and such of the said papers, or writings, as purport to be copies of duplicates, or copies with the duplicates, or copies of which they purport to be copies; and that the same papers, or writings, hereunto annexed, are respectively true and correct copies of the several documents of which they purport to be copies; and this deponent further saith, that he was present, and did see Rob't Lemon, the chief clerk in her majesty's state paper office, sign and attest the said annexed papers, or writings; and that the name "Robert Lemon," thereunto respectively set and subscribed, is of the proper hand-writing of the said Robert Lemon; and that he, this deponent, was also present, and did see the seal of the said state paper office affixed to the said several papers, or writings, by the proper officer of the said office.

H. SEWELL.

Sworn at the Mansion House, in the City of London, the 26th day of July, 1841, before me,

THO. JOHNSON, *Mayor.*

C.—Attestation of Governor Tryon, of the Deed with the Cherokees, dated 13th July, 1767. (Orig.)

STATE PAPER OFFICE, *America, vol.* 196.

NORTH CAROLINA, *ss.*

By his Excellency, William Tryon, Esquire, His Majesty's Captain General, and Governor in Chief, in and over the said Province, to all to whom these presents shall come, greeting:

Know ye, that the annexed settlement between the commissioners therein named, and the Cherokee Indians, is a true copy, taken from the original, lodged in the secretary's office of this province, and that the several other papers and writings, hereunto annexed, are duplicates, and copies of those delivered to me, upon oath, by John Rutherford, Esq., one of the members of his majesty's council, and one of the commissioners upon that service; therefore, all due faith and credit is, and ought to be had and given to the same.

In testimony whereof, I have hereunto set my hand, and caused the great seal of his majesty's said province to be affixed, the 13th July, in the year of our Lord 1767, and in the seventh year of his majesty's reign.

(Signed) WM. TRYON. [L. S.]

By his excellency's command.

(Signed) BEN. HERON, *Sec.*

I hereby certify that this is a true copy of the original, deposited in her majesty's state paper office, London.

ROB'T LEMON, *Chief Clerk.*

STATE PAPER OFFICE, 20*th July*, 1841.

Deed with the Cherokees, dated 13th June, 1767. (Copy.)

STATE PAPER OFFICE, *America, vol.* 196.

Be it remembered, that on the 13th day of June, in the seventh year of the reign of our sovereign lord, King George the Third, by the grace of God, of Great Britain, France and Ireland, king, defender of the faith, &c., and in the year of our Lord one thousand seven hundred and sixty-seven, it was agreed, in behalf of his most excellent majesty, of the one part, and the head beloved men and warriors of the Cherokee nation, of the other part, witnesseth: that whereas, by a talk had between the head beloved men and warriors of the Cherokee nation, and the hon'ble John Stuart, Esq., his majesty's superintendent of Indian affairs, for the southern department, dated 20th day of October, one thousand seven hundred and sixty-five, concerning the boundary lines between the frontiers of the Province of North Carolina, and the Cherokee hunting grounds, to avoid all further disputes, it was unani-

mously agreed as follows, by the Prince of Chote, Juds Frund, and all the head warriors and head beloved men of the Over Hills, Middle Settlements and Lower Farms, that a line on the North Carolina side should be run, to commence where that on the South Carolina terminates; and to be run a north course into the mountains, whence a straight line, to the lead mines of Col. Chiswell, should fix the boundary; in which talk his excellency William Tryon, Esq., governor and commander in chief in and over his majesty's Province of North Carolina, &c., by commission under his hand and seal, appointed the hon'ble John Rutherford, the hon'ble Robert Palmer, Esq'rs, and John Frohock, Esq., commissioners to run the said boundary line between the frontiers of North Carolina and the Cherokee hunting grounds. The commissioners aforesaid, with Alexander Cameron, Esq., deputy superintendent, and the head chief and warriors of the said nation, to wit, Juds Frund, Tufftoe, Sallowee, or the Young Warrior of Estatoe, Ecoy, Chinesto, of Sugar Town, and the Wolf of Keowee, and others, met on the fourth day of June, one thousand seven hundred and sixty-seven, at Reedy river, and run the line as follows: Beginning at a waughoe, or elm tree, on the south side of Reedy river, standing on the bank of the river, where the South Carolina line terminates, and runs thence a north course about fifty-three miles, into the mountains, to a Spanish oak, marked with the initial letters of the commissioners' names; and several other trees, with the names and marks of Juds Frund, Sallowee, Ecoy, and others, standing on the top of a mountain, called by us Tryon mountain, on the head waters of White Oak creek, and Packolet creek; White Oak running into Green river, and Packolet running into Broad river; and as it was found impracticable that a line should be run and marked through the mountains, to Colonel Chiswell's mines, it is further agreed between the said John Rutherford, Robert Palmer and John Frohock, commissioners as aforesaid, in behalf of his most excellent majesty, and the said Alexander Cameron, Esq., deputy superintendent as aforesaid, and Juds Frund, Tufftoe, Sallowee, Ecoy, Chinesto, and the Wolf of Keowee, in behalf of themselves, and the head beloved men and warriors of the Cherokee nation, that the line between the frontiers of North Carolina, and the Cherokee hunting grounds, be continued as follows: Running from the top of Tryon mountain aforesaid, beginning at the marked trees thereon, by a direct line to Chiswell's mines, in Virginia, shall, and is hereby declared to be the boundary line between the said frontiers of North Carolina and the Cherokee hunting grounds; and the commissioners aforesaid, in behalf of his most excellent majesty, and the said Alexander Cameron, Esq., Juds Frund, Tufftoe, Sallowee, Ecoy, Chinesto, and the Wolf of Keowee, in behalf of themselves, and the head beloved men and warriors of the Cherokee nation, agree, determine and conclude that the boundaries aforesaid, herein described, shall stand, be and remain the boundary line between the

frontiers of this province and the Cherokee hunting grounds, until his most excellent majesty's pleasure shall be further known thereon.

In testimony of which, the several parties herein mentioned have hereunto interchangeably set their hands and seals, the day and year first above written.

JOHN RUTHERFORD, [L. S.]
ROBERT PALMER, [L. S.]
JOHN FROHOCK, [L. S.]
ALEXANDER CAMERON, [L. S.]
USTINICAH ATTASSATIE, or Juds Frund, his X mark [L. S.]
ECOY, or the Good Warrior of Estaloe, his X mark [L. S.]
SALUY, or the Young Warrior of Estaloe, his X mark [L. S.]
TUFFTOE, the Warrior Keowee, his X mark [L. S.]
WOLF, of Keowee, his X mark [L. S.]
CHENESTO, of Sugar Town, his X mark [L. S.]

I hereby certify, that this is a true copy of the document deposited in her majesty's state paper office, London.

ROBT. LEMON, *Chief Clerk.*

State Paper Office, 20th July, 1841.

E.

Copy of a letter from Mr. Stewart, superintendent, to Mr. President Blair.

State Paper Office, }
America, Vol. 189. }

Hard Labour, 17th *Oct'r*, 1768.

Sir,—I have the honour of acquainting you, that in obedience to his majesty's commands, on the 13 inst. I met at this place all the principal chiefs of the upper and lower Cherokee nations; and on the 14th, by his majesty's royal authority, concluded a treaty with said Indians, ratifying the cessions of land lying within the provinces of South Carolina, North Carolina and Virginia, by them to his majesty and his heirs forever; and confirming the boundary line marked by the lords commissioners of trade and plantations, according to the several agreements entered into with said Indians.

The line now ultimately confirmed and ratified by said treaty, was as follows:

From a place called Towahihie, on the northern bank of Savannah river, *a* north 50 degrees, east course in a straight line to a place called Demesses corner, or Yellow Water; from Demesses corner or Yellow Water, *a* north 50 degrees, east course in a straight line to the southern bank of Reedy river, at a place called Waughoe, or Elm Tree, where the line behind South Carolina ter-

minates; from a place called Waughoe, or Elm Tree, on the southern bank of Reedy river, a north course, in a straight line to a mountain, called Tryon Mountain, where the great ridge of mountains becomes impervious; from Tryon Mountain in a straight line to Chiswell's mine, on the eastern bank of the Great Conhoway river, about a N. B. E. course; and from Col. Chiswell's mine, on the eastern bank of the Great Conhoway, in a straight line about a north course, to the confluence of the Great Conhoway with the Ohio.

As soon as possible after my return to Charleston, I shall send you extracts of my conferences, and an authentic copy of the above mentioned treaty concluded with said chiefs.

I acquainted the chiefs that I expected their deputies would set out immediately from this place, with my deputy, to meet your commissioners at Colonel Chiswell's mine, in order to finish marking the boundary line, as agreed upon; but they objected, and desired that service might be deferred till the spring of next year. The reasons they urged for this delay are as follows:

That when they appointed the 10th day of November for the time of meeting your commissioners, to proceed upon that very important service, they understood that they had no more to mark than from the mountains, where the line behind the North Carolina ends, to Chiswell's mine, on the Conhoway, as they considered the river, from thence to its confluence with the Ohio, as a natural boundary; but as the line is to run in a straight course almost due north from the mine to the mouth of the river, the advanced season of the year will render that service impracticable before the spring, as the line now ultimately agreed upon runs through a large extent of mountainous country, uninhabited, where, in the winter, the cold will be extremely intense, and there will be no shelter for man, or food for horses at that season.

These reasons appeared to me so good and just, I was obliged to acquiesce in them, and I send this letter by express, to prevent as much as possible any disappointment that might result from this alteration. I hope you will receive it in time to prevent your commissioners setting out. The chiefs have appointed the 10th of May next for meeting your commissioners at Chiswell's mine, which, I hope, will prove agreeable, and their reasons for altering their time satisfactory to you.

I reproached the Cherokees severely with the murder of five emigrants from your province, who were going to the Mississippi, which was committed in summer last. They confessed it, and said the perpetrators were a party of Chilhowie people, who urged, in their own defence, that their relations had been killed in Augusta county, in your province, in 1765, for which they had never received any satisfaction, although repeated promises had been made, either of putting the guilty persons to death, or making compensation in goods from your province, which they believed be-

cause I had confirmed them. That they, nevertheless, were disappointed, and being tired with waiting, took that satisfaction which they could not obtain from our justice. All the warriors declared that they disapproved of the action, but the Chilhowie people were authorised by the custom of their country to act as they did, and their plea of never having had any satisfaction, was undeniable; that in any other instance nothing should prevent their executing strict justice on offenders according to treaties. It is not only extremely disagreeable to myself, but very detrimental to his majesty's service, to be obliged to fail in any promise I make to Indians. The compensation of 500 Indian dressed deer skins, value in goods, for every person murdered, which, on the faith of Governor Fauqueer's repeated letters, I engaged they should receive in the spring, was extremely moderate; and this, you will acknowledge, if you compare it with the sum expended by the province of Pennsylvania on a late similar occasion; and I must confess, that this disappointment will render me extremely cautious in making promises on any future occasion.

I am to meet the chiefs of the upper and lower Creek nations at Silver Bluff, on Savannah river, the 1st November, to ratify the cessions to his majesty in the two Floridas and Georgia, and expect to be at Charleston by the time the bearer can return there.

I have the honor of being, very respectfully, sir,

Your most obedient
and very humble servant,
JOHN STUART.

P. S.—I have agreed to pay the bearer, Samuel Shainacre, 22 pistoles.

THE HON. JOHN BLAIR, ESQ.

(Indorsed.)

Mr. Stuart to Mr. Pres't Blair. In lord Botetourt's (No. 4,) of 10th Nov. 1768.

I hereby certify, that this is a true of the document deposited in her majesty's state paper office, London.

ROBT. LEMON, *Chief Clerk.*

STATE PAPER OFFICE, 20th July, 1841.

F.

Deed with the Indians, dated 5th November, 1768.

STATE PAPER OFFICE, *America, Vol.* 189.

Duplicate.

To all to whom these presents shall come or may concern: We, the sachems and chiefs of the Six United Nations, and of the Shawanese, Delawares, Mingoes, of Ohio, and other dependant

tribes, in behalf of ourselves and the rest of our several nations, the chiefs and warriors of whom are now here convened, by Sir William Johnson, Baronet, his majesty's superintendent of our affairs, send greeting:

Whereas, his majesty was graciously pleased to propose to us in the year 1765, that a boundary line should be fixed between the English and us, to ascertain and establish our limits, and prevent those intrusions and encroachments of which we had so long and loudly complained, and to put a stop to the many fraudulent advantages which had been so often taken of us in land affairs; which boundary, appearing to us a wise and good measure, we did then agree to a part of a line, and promised to settle the whole finally, whenever Sir William Johnson should be fully impowered to treat with us for that purpose.

And, whereas, his said majesty has at length given Sir William Johnson orders, Sir William Johnson has convened the chiefs and warriors of our respective nations, who are the true and absolute proprietors of the lands in question, and who are here now, to a very considerable number; and, whereas, many uneasinesses and doubts have arisen amongst us, which have given rise to an apprehension that the line may not be strictly observed on the part of the English, in which case matters may be worse than before; which apprehension, together with the dependent state of some of our tribes, and other circumstances which retarded the settlement and became the subject of some debate, Sir William Johnson has at length so far satisfied us upon, as to induce us to come to an agreement concerning the line, which is now brought to conclusion, the whole being fully explained to us in a large assembly of our people, before Sir William Johnson, and in the presence of his excellency the Governor of New Jersey, the commissioners for the provinces of Virginia and Pennsylvania, and sundry other gentlemen; by which line so agreed upon, a considerable tract of country along several provinces is, by us, ceded to his said majesty, which we are induced to, and do hereby ratify and confirm to his said majesty, from the expectation and confidence we place in his royal goodness, that he will graciously comply with our humble requests, as the same is expressed in the speech of the several nations, addressed to his majesty through Sir William Johnson, on Tuesday, the first day of the present month of November, wherein we have declared our expectations of the continuance of his majesty's favor, and our desire that our ancient engagements be observed, and our affairs be attended to by the officer who has the management thereof, enabling him to discharge all these matters properly for our interest; that the lands occupied by the Mohocks around their villages, as well as by any other nation effected by this, our cession, may effectually remain to them and their posterity; and that any en-

gagement regarding property, which they may now be under, may be prosecuted, and our present grants deemed valid on our parts, with the several other humble requests contained in our said speech.

And, whereas, at the settling of the said line, it appeared that the line described by his majesty's order, was not extended to the northward of Owegy, or the southward of Great Kanhawa river; we have agreed to and continued the line to the northward, on the supposition that it was omitted by reason of our not having come to any determination concerning its course, at the Congress held in 1765, and in as much as the line to the northward became the most necessary of any for preventing encroachments at our very towns and residences, and we have given this town more favorably to Pennsylvania, for the reasons and considerations mentioned in the treaty. We have likewise continued it south to Cherokee river, because the same is, and we do declare it to be, our true bounds with the southern Indians; and that we have an undoubted right to the country as far south as that river, which makes our cession to his majesty much more advantageous than that proposed.

Now, therefore, know ye, that we, the sachems and chiefs aforementioned, native Indians and proprietors of the lands hereinafter described, for and in behalf of ourselves and the whole of our confederacy, for the considerations hereinbefore mentioned; and also for and in consideration of a valuable present of the several articles in use and amongst Indians, which, together with a large sum of money, amount, in the whole, to the sum of ten thousand four hundred and sixty pounds seven shillings and three pence sterling, to us now delivered and paid by Sir William Johnson, Baronet, his majesty's sole agent and superintendent of Indian affairs for the northern department of America, in the name and on behalf of our sovereign lord, George the Third, by the grace of God, Great Britain, France and Ireland, king, defender of the faith. The receipt whereof we do hereby acknowledge.

We, the said Indians, have for us, our heirs and successors, granted, bargained, sold, released and confirmed, and by these presents do grant, bargain, sell, release and confirm unto our sovereign lord, King George the Third, all that tract of land situate in North America, at the back of the British settlements, bounded by a line which we have agreed upon, and do hereby establish as the boundary between us and the British colonies in America, beginning at the mouth of the Cherokee or Hogohege river, where it empties in the river Ohio, and running from thence upwards along the south side of the said river to Kittanning, which is above Fort Pitt; from thence by a direct line to the nearest fork of the west branch of the Susquehannah; thence through the Allegheny mountains, along the south side of the west branch, until it comes opposite to the mouth of a creek called Tiudgton; thence across

the west branch and along the south side of that creek, and along the north side of Burnett's hills, to a creek called Awandae; thence down the same to the east branch of Susquehannah and across the same, and up the east side of that river to Owegy; from thence east to Delaware river, and up that river to opposite where Teanaderha falls into Susquehanna; thence to Teanaderha and up the west side thereof, and the west side of its west branch to the head thereof; and thence by a direct line to Canada creek, where it empties into the Wood creek, at the west end of the Carrying Place beyond Fort Stanwix, and extended eastward from every part of the said line as far as the lands formerly purchased, so as to comprehend the whole of the lands between the said line and the purchased lands or settlements, except what is within the province of Pennsylvania, together with the hereditaments and appurtenances to the same belonging or appertaining, in the fullest and most ample manner; and all the estate, right, title, interest, property, possession, benefit, claim and demand, either in law or equity, of each and every of us, of, in, or to the same, or any part thereof: to have and to hold the whole land and premises hereby granted, bargained, sold, released and confirmed as aforesaid, with the hereditaments and appurtenances thereunto belonging, under the reservations made in the treaty unto our said sovereign lord, King George the Third, his heirs and successors, to and for his and their own proper use and behoof, forever.

In witness whereof, we, the chiefs of the confederacy, have hereunto set our marks and seals, at Fort Stanwix, the 5th day of Nov., 1768, in the 9th year of his majesty's reign.

TRYANHASON, or ABSAHAM,	his ⋈ mark.	[L. S.]
CONAOPRIESO,	his ⋈ mark.	[L. S.]
SESQUARESSORA,	his ⋈ mark.	[L. S.]
BLUNT, or CHENUGHEATA,	his ⋈ mark.	[L. S.]
TEGAYA,	his ⋈ mark.	[L. S.]
GOSTSAA,	his ⋈ mark.	[L. S.]

Signed, sealed and delivered in presence of

WILLIAM FRANKLIN, *Gov N. Jersey.*
FREDERICK SMITH, *Chief Justice N. Jersey.*
THOS. WALKER, *Commissioner from Virginia.*
RICHARD PETERS,
JAMES TILGHMAN, *of the Council of Pennsylvania.*

Indorsed:

Treaty at Fort Stanwix, in Lord Botetourt's dup., (No. 6.) of 24th Dec., 1768.

I hereby certify, that *that* this is a true copy of the original deposited in her majesty's state paper office, London.

ROBERT LEMON,
Chief Clerk.

State Paper Office,
20th July, 1841.

G.

Instructions from Lord Botetourt to Co'l Lewis and Dr. Walker. Williamsburg, Dec. 20th, 1768. (Orig.)

State Paper Office, }
America, vol. 189. }

Duplicate.

Gentlemen,—As it has been the opinion of his majesty's council, upon reading and considering the papers you have laid before them, relative to the treaty held with the Six Nations at Fort Stanwix, that you should immediately proceed to Mr. Stuart, superintendent of the Southern district, and acquaint him with the result thereof, and to represent to him the necessity of a fresh plan of operation, with respect to the boundary, to be fixed between the Cherokee Indians, and his majesty's Colony of Virginia, it has been thought proper, that I should give some orders and instructions for the regulation of your conduct in this important affair. You will consider that the principal object of your journey is to convince Mr. Stuart, that the line he proposes to run from Chiswell's mine, to the mouth of the great Konhaway, will so much contract the limits of this colony, as to make it extremely prejudicial to his majesty's service, as well as injurious to the people who have been encouraged to settle to the westward, of this proposed boundary; you will observe to him, that it appears from one of Sir William Johnson's letters, to Mr. President Blair, dated the 23d of April last, that he, Sir William, had orders to consult the governors upon such points as might affect their several provinces; and it is presumable that Mr. Stuart's orders were agreeable to Sir William's, tho' no consultation with the Governor of this Colony hath been had upon this subject, nor any opportunity allowed to Virginia to shew their strong objections to this very limited boundary. If Virginia had been consulted upon this line, there would have been an opportunity of showing, that the Cherokees have no just title to the lands between the supposed line, and the mouth of the Cherokee river, which in fact were claimed, and have been sold to his majesty by the Northern Nations, at the late treaty at Fort Stanwix. You will observe, that what I and the council have

chiefly in view, from this negotiation with Mr. Stuart, is to get the period of meeting the Cherokees upon this business still further protracted, so that we may have time fully to state this whole matter to his majesty and his ministers, in order to get the boundary extended to the Cherokee river.

Should Mr. Stuart object, that he is not furnished with money as Sir William Johnson was, you may assure him, that it is a part of my plan to implore his majesty's ministers, to endeavour to assist us in that same manner, and that I am not without hopes of success. You are likewise to acquaint Mr. Stuart, that in consequence of the promise made by this Government of 4500 lbs. of dressed deer skins, in goods intended as a compensation for those Cherokees who lost their lives in Augusta County, those goods were actually purchased and sent off, to be delivered to them at the Congress appointed to be held at Chiswells' mines, in November last; but that as upon examination, several of them are found to be much damaged, and impaired in their value, you are to accept Mr. Cameron's proposal, signified to Mr. President Blair, in his letter of the 9th of June, and are to have the proper goods to that amount bought of the gentleman, who has offered to deliver them at Teguch, at an advance which Mr. Cameron thought reasonable.

You are at the same time to procure a sufficient quantity of wampum, for belts, &c., to be given to the Indians; as I know you to be perfectly acquainted with the business you are going upon, will trouble you with no further instructions, but refer to your judgment and discretion, to do the best as occasion shall offer. I have not the least doubt, but that you will give me the earliest intelligence of your success during the course of this very material transaction.

I have the honor to be,
gentlemen, your very
obedient humble servant,
(Signed,) BOTETOURT.

Williamsburg, Dec. 20th, 1768.

Instructions to Co'l Lewis and Dr. Walker.

Indorsed:

Instructions to Commissioners.

Duplicate.

In Lord Botetourt's Dup. (No. 6,) of *24th Dec.* 1768.

I hereby certify, that this is a true copy of the original, deposited in her majesty's state paper office, London.

ROB'T LEMON,
Chief Clerk.

State Paper Office, *20th July*, 1841.

H.

Report of Col. Lewis and Dr. Walker, to Lord Botetourt, 2d Feb'y, 1769.

STATE PAPER OFFICE, }
America, vol. 189. }

MY LORD,—On receiving your excellency's instructions, we began our journey to Charlestown, in South Carolina, on the 5th day of January; we waited on his excellency William Tryon, Esq., at Brunswick, by whom we were kindly received, and promised all the assistance in his power; and the next day we went to Fort Johnson, near the mouth of Cape Fear; on the 8th Governor Tryon wrote us, that some Cherokee Indians were at Brunswick; Juds Frund, and Salue, or the young warrior of Estatoe, were two of them; and that they would that day be at Fort Johnson; his excellency was kind enough to come with them; on their arrival we informed them we were going to their father John Stuart, Esq., on business relative to the interest of their nation, and should be glad of their company, and they readily agreed to go with us; on the 9th, the vessel we had engaged was ready to sail, and we embarked with two Cherokee Chiefs, and two Squaws and an interpreter; on the 11th, we waited on Mr. Stuart, delivered your lordship's letter, and fully informed him of our business. In answer Mr. Stuart told us, that the boundary between the Cherokees, and Virginia, was fully settled and ratified in Great Britain, and that any proposal of that kind would be very alarming to them; but after some time agreed we might mention it to them, which we did on the thirteenth of January.

The Indian Chiefs appeared much pleased, and agreed to wait on Mr. Stuart with us, and in his presence Juds Frund spoke as follows: "Father, on an invitation from Governor Tryon, we left our country some time since; as soon as he saw us, he told us of those our two old brothers, Co'l Lewis and Dr. Walker, from Virginia, who had matters of importance to mention to us, that equally concerned our people, as well as theirs. This news gave us great joy, and we lost no time in waiting on them, and with great pleasure took a passage with them, in order to wait on you on the business which so much concerned us, as well as their people; and to convince you we like their talk, we now take them by the hand, giving them a hearty welcome, and present them with this string of wampum.

"Father, they tell us, that by running the line lately mentioned as a boundary, between our people and Virginia, a great number of

their people will fall within the bounds of our country, which would greatly distress those our poor brothers, which is far from our intention; and to convince you that we are, on all occasions, willing to testify our brotherly affection towards them, we are heartily willing to join in such negociations as may be thought necessary and most expedient, for fixing a new boundary, that may include all those people settled on our lands in the bounds of Virginia, and we now give them, in presence of you our father, this string of wampum, as an assurance those people shall remain in peaceable possession of those lands, until a treaty is held for fixing a new boundary between them and our people." (Gives a string of wampum.)

He then delivered the following talk to the warriors, to be by them communicated to their nation.

"Brothers: On the 20th day of December last, in Williamsburg, we received instructions from Lord Botetourt, our Governor, a great and good man, whom the great King George has sent to preside over his Colony of Virginia, directing us to wait on your father John Stuart, Esq., superintendent of Indian affairs, in order to have a plan agreed on, for finding a new boundary between your people and his majesty's subjects in the Colony of Virginia.

"On our way to this place, to our great joy we met with our good brothers, Juds Frund, and the warrior of Estitoe, who with great readiness took a passage with us from Governor Tryon's to this place, where we had the happiness of waiting on your father, Mr. Stuart, and with joint application represented to him the necessity of taking such measures as may effectually prevent any misunderstandings that might arise between his majesty's subjects of the colony of Virginia, and our brothers, the Cherokees, until a full treaty be opened and held, for the fixing a new boundary, that may give equal justice and satisfaction to the parties concerned; and that his majesty's subjects, now settled on the lands between Chiswell's mines, and the great Island of Holston's river, remain in possession of said lands, until a line is run between them and our good brothers the Cherokees, who will receive full satisfaction for such lands as you, our brothers, shall convey to our great King for the use of his subjects. Your father, Mr. Stuart's, message to you on this head makes it useless for us to say any more on this subject; he will let you, at a proper time, know both the time and place where this great work shall be brought into execution.

"We will have the pleasure to inform you, that your two great warriors now present have heartily concurred with us in every measure, and make no doubt of such measures giving great satisfaction to the whole nation." (Gave a string of wampum.)

Jan'y, 16th.

In answer to which, Juds Frund and the warrior of Estatoe spoke as follows:

"Father and ourbrothers from Virginia: We have heard your talks, which we think very good, and shall with all convenient speed return to our nation, and when our chiefs are assembled, shall lay those talks before them. Brothers, we are sorry to have it to say, that for some time bad blood and evil actions prevailed amongst us, which occasioned a stroke from our elder brothers, but now I have the satisfaction of telling you, that our hearts are good and straight, and you may depend on their continuing so; and that you may depend the more on what we say, we take off those black beads from the end of this string, that nothing may remain but what is pure and white; we now put the black beads in your hands, which we call the remains of our evil thoughts, and desire you may now cast them away, that they may never be had in remembrance more. Brothers, we shall with great pleasure comply with the request you have made with regard to the lands you have mentioned, and shall wait with impatience for a general meeting, that we may have opportunity of convincing our elder brothers of our friendly disposition towards them by giving up those lands, as they may be of real use to them, for to us it is little or none, as we never hunt there; the deer do not live in *them* mountains; and you in the mean time may depend, that your people shall enjoy peaceable possession, until we make a title to the great King. Brothers, we hope the measures now taken will be productive of many advantages to our people, as well as yours, who, by living so much nearer to us, will have it in their power to supply us with goods, for we are often imposed on greatly, as we have no trade at present but from this Province; and we hope you our brothers, will signify to your Governor, who we believe to be that great and good man you mention, our great desire to have a trade with Virginia; that after this business is happily finished, which we make no doubt on the part of our nation, we may enjoy a friendly intercourse, and an advantageous trade, with our brothers, the inhabitants of Virginia.

"Brothers, we have often joined you in war against your enemies, and you may always depend on our assistance, on any future occasion." (Gives a string of wampum.) After we had given Mr. Stuart our reasons, for thinking it absolutely necessary that a new boundary should be agreed on, he desired us to commit those reasons in writing, and sign them, which we did in the following words:

Sir,—His excellency the right honorable Norborne de Lord Botetourt, Governor-in-chief of the Colony of Virginia, and the king's council of that dominion, having ordered us to wait on you, and assist in settling a boundary between that colony and the Cherokee Indians, we beg leave to inform you, that the line proposed to be marked from Chiswell's mines to the confluence of the great

Kenhawa and the Ohio, would be a great disadvantage to the crown of Great Britain, and would injure many subjects of Britain that now inhabit that part of the frontier, and have, in making that settlement, complied with every known rule of government and laws of that colony. Lands were first granted on the waters of the Mississippi, by Sir William Gooch, Governor of Virginia, and the council, about the year 1746, in consequence of instructions from England, and many families settled on the lands, so granted.

In the year 1752, the Legislature of Virginia passed an act entitled "an act to encourage the settlers on the Mississippi;" by that act they were exempted from the payment of taxes for ten years; to this act his late majesty, of glorious memory, gave his assent.

The next year another act was passed, by which five year's indulgence was added; and in that or the succeeding year, Robert Dinwiddie, Governor of Virginia, at that time received instructions from King George the second, to grant lands on those waters exempt from the payment of the usual right money, and free from quit rents for ten years.

Under these encouragements was that part of the colony settled; whilst the inhabitants were settling on those lands, the Cherokee Indians were frequently at their habitations, and never, that we or either of us ever heard, made the least complaint of our settling, or laid any claim to the lands we settled, until November, 1763, after the King's proclamation issued in that year. The six United Nations did claim the lands that were settled on the branches of the river Kenhawa and Monongahela, and were paid a proper consideration for them, at Lancaster, in 1744, when they executed a deed of cession to his late majesty. We flatter ourselves that the above is sufficient to convince you of the justice and legality of making those settlements; the boundary line that has been proposed would include many of the inhabitants before mentioned, within the limits of the Cherokee nation hunting grounds; for all such lands and improvements, the justice of the crown would be a sufficient inducement to make some satisfaction to the owners, which would be an expense to the crown, and injure the inhabitants much, and totally ruin many of them; and the evil would be increased by the loss of the quit rents annually paid for those lands, and would also give the Cherokees a large tract of country that was never claimed by them, and now is the property of the crown, as Sir William Johnson actually purchased it of the six United Nations of Indians, at a very considerable expense, and took a deed of cession from them at fort Stanwix, near the head of the Mohocks' river, on the 5th day of November last. The interest of the crown and inhabitants of Virginia, will be most served by fixing the boundary with the Cherokees, in 36 degrees 30 minutes north latitude, that boundary being already marked by proper authority, as far as Steep Rock creek, a branch of the Cherokee river, and is the proper division between Lord Granville's proprietary and the

dominion of Virginia, and includes but a small part of the lands now claimed by the Cherokees, they having often disclaimed the lands lying between the Ohio, and the ridge of mountains called the Steep Ridge, that divides the waters of the Cumberland river from the waters of Cherokee river. The boundary will give room to extend our settlements for ten or twelve years, will raise a considerable sum by the rights, much increase the quit rents and enable the inhabitants of Virginia to live without manufacturing such materials as they raise.

AND'W LEWIS,
THO'S WALKER.

Feb'y 2d, 1769.

(Indorsed:)

Report from Commissioners.

Duplicate.

In Lord Botetourts' (No. 8.) Dup. of 11th Feb., 1769.

I hereby certify that this is a true copy of the document deposited in her majesty's state paper office, London.

ROB'T LEMON,
Chief Clerk.

STATE PAPER OFFICE,
20*th July*, 1841.

I.

Memorial of the House of Burgesses of Virginia.

STATE PAPER OFFICE, }
America, Vol. 190. }

To his Excellency the Right Honorable Norborne, Baron de Botetourt, his majesty's lieutenant and governor-general of the colony and dominion of Virginia, and vice-admiral of the same: The memorial of the House of Burgesses humbly represents:

That your memorialists, having paid the earliest attention to your lordship's speech at the opening of this session, have taken under their most serious consideration that very interesting part of it which relates to the report of the right honourable the Board of Trade and Plantations, to his majesty, respecting the extension

of the boundary of this colony to the westward; and as your memorialists are extremely solicitous on all occasions to stand fair in the royal opinion of their most gracious sovereign, they humbly presume to lay before your excellency their reasons for not immediately complying with his majesty's requisition, communicated to them by your lordship in such very polite and engaging terms.

Sensible as your memorialists are of the many signal advantages which would redound, as well to his majesty as to several of his American colonies, they should think themselves blind to their duty and interest, if they did not secure with all thankfulness your lordship's information of the benefits intended to them, by his majesty's gracious approval of a more extended boundary than had been proposed by the Superintendent of Indian affairs in the Southern department: but they flatter themselves that a revision of the subject, if his majesty would once more be pleased to condescend to take it under his princely consideration, would convince his majesty that his most gracious purpose cannot be answered by establishing the line proposed.

Your memorialists beg leave to observe, that the said line, if extended from the intersection of Holston's river, the point which would terminate the line dividing this colony from North Carolina, to the mouth of the Great Kenhaway, would be near two hundred miles in length, and must pass through a country abounding with high hills and rugged mountains, extremely difficult and dangerous of access, and intersected by many water courses; that the present posture of Indian affairs would make a strong guard of armed men necessary for the protection of those who might be commissioned to run such line, as it must necessarily pass through a country uninhabited, and through which those Indians who seem, at present, not inclined to hostilities, do frequently take their routes. That by establishing such line, a great part of that most valuable country lying on the Ohio below the mouth of the Great Kenhaway, lately ceded to his majesty by the Northern Indians, would be separated and divided from the British territories on the upper part of Holston's river, the Great Kenhaway, and the Ohio: which your memorialists humbly conceive must greatly impede, and may totally prevent, the settlement of that fertile and extensive country, which, from its situation, and many natural advantages, would open the fairest prospect of a very beneficial commerce to our northern country, by securing to his majesty's subjects a new and extensive trade with the several tribes of western Indians, which has hitherto been almost engrossed by the subjects of France: and by this means many Indian nations heretofore living at enmity with our most gracious sovereign, and his subjects, might be made friendly and useful, in extending the trade and navigation of Great Britain.

That your memorialists have the greatest reason to fear that the said line, if confirmed, would constantly open to the Indians, and

others, enemies to his majesty, a free and easy ingress to the heart of the country on the Ohio, Holston's river, and the Great Kenhaway, whereby the settlements which may be attempted in those quarters will, in all probability, be utterly destroyed; and that great extent of country from the mouth of the Kenhaway to the mouth of the Cherokee river, extending eastward as far as Laurel Hills, so verry lately ceded to his majesty, and to which no tribe of Indians at present sets up any pretensions, will be entirely abandoned to the Cherokees; in consequence of which, claims, totally destructive of the true interests of his majesty, may at some future time arise, and acquisitions, justly ranked amongst the most valuable of the late war, be altogether lost.

Your memorialists farther beg leave to represent to your lordship, that lands which have been granted by patents regularly obtained, according to the known and fixed rules of this government, if the said line were to take place, would be entirely dismembered from this colony, allotted to the Indians, and entirely lost to the proprietors, who were authorized by law, and incouraged by the royal instructions of his late majesty to his governor, to explore and settle this new country, at the risque of their lives, and at a great expense.

Your memorialists, from these weighty considerations, have been induced to extend their views, and do humbly offer as their opinion, that a line beginning at the western termination of the North Carolina line, and running thence in a due west direction to the river Ohio, may be accomplished at a much less expense than the other line proposed: that the extension of such a line is necessary for the safety and advantage of his majesty's subjects, and that it would tend greatly to increase his majesty's revenue, and to the promotion of the trade and navigation of the western part of this dominion, if a purchase were made of the Cherokee Indians of all their lands, which such due western lands would include; especially if his majesty would be graciously pleased, in his royal wisdom, to discourage all monopolies of those lands, and strengthen our barrier, by granting them in small or moderate quantities to such adventurers as might incline to seat and settle the same.

Your memorialists, for the better illustration of the foregoing observations, beg leave to lay before your excellency as exact and perfect a plan of that part of the country, as they at present are able to procure, and humbly submit the whole matter to your excellency's judgment. From such representation as your excellency may think fit to make, we presume to flatter ourselves, that his majesty will be graciously pleased to order a suspension of any other line, that may effect the very numerous settlements of his subjects to the eastward of that now proposed, till the matter is reconsidered, and fully and clearly understood.

Indorsed:

Memorial from the House of Burgesses. In Lord Botetourt's (No. 25) of 18th Dec., 1769.

I hereby certify, that this is a true copy of the document deposited in her majesty's State Paper Office, London.

ROBT. LEMON,
Chief Clerk.

State Paper Office,
20th July, 1841.

J.

Address of the House of Burgesses of Virginia, to Lord Botetourt, 15th Dec., 1769.

State Paper Office, }
America, Vol. 189. }

To his excellency the Right Honourable Norborne, Baron de Botetourt, his majesty's lieutenant and governor-general of the colony of Virginia, and vice-admiral of the same—the humble address of the House of Burgesses:

My Lord,—We, his majesty's most dutiful and loyal subjects, the Burgesses of Virginia, having, agreeable to our former assurances, maturely and deliberately considered your excellency's speech, beg leave to renew our unfeigned thanks for his majesty's kind attention to the interests of this colony, in so readily approving the report of the Right Honorable the Board of Trade and Plantations, in favor of a more extended boundary to the westward.

We are persuaded that his majesty's sole motive for so doing arose from his most gracious inclination to promote the security and happiness of his dutiful subjects: but permit us, my lord, with all humility and deference to his royal wisdom, by an humble memorial to express our apprehensions that his majesty hath not been made properly and fully acquainted with the true situation of our frontiers; and suffer us to entreat your lordship, that you will be pleased to lay before our royal sovereign a more perfect state of the matter, and endeavor to procure for this colony such farther indulgencies, in enlarging its boundary, as to his majesty, in his great wisdom, may seem just and right.

On our parts, we do assure your excellency that we shall, at all times, be ready and willing cheerfully to comply with every requisition in our power, that may tend to promote the honor and dignity

of his majesty's crown, the extension of his dominions, and the interests of this colony. But if, unfortunately for this colony, his majesty hath already taken his ultimate resolution to confine his subjects to the line proposed by your excellency, we must humbly acquiesce, and will furnish the two thousand five hundred pounds sterling, according to the estimate you have been pleased to communicate to us.

Lord Botetourt's answer.

Mr. Speaker, and Gentlemen of the House of Burgesses:

I will transmit to the Earl of Hillsborough, by the very first opportunity, the whole of your reasoning in favor of a more extended boundary of this colony to the westward, than that which was last recommended by the Board of Trade; and will entreat his lordship to implore his majesty to indulge his House of Burgesses in every wish of their hearts, which, in his royal wisdom, he shall deem consistent with his paternal regard for all his people.

Indorsed:

Address of the House of Burgesses, presented by whole House, Dec. 15th, 1769. In Lord Botetourt, (No. 25) of 18th Dec., 1769.

I hereby certify, that this is a true copy of the document deposited in her majesty's State Paper Office, London.

ROBT. LEMON,
Chief Clerk.

State Paper Office,
20th July, 1841.

K.

Resolution of the House of Burgesses of Virginia, 16th June, 1769.

State Paper Office, }
America, Vol. 190. }

By the House of Burgesses.

Resolved, That an humble address be presented to his excellency, the governor, to desire that he will immediately take such steps as are necessary for entering upon a treaty with the Cherokees, for the lands lying within a line to be run from the place where the North Carolina line terminates, in a due western direction, till it intersects Holstein river, and from thence to the mouth of the Great Kanhawa; and that he will be pleased, when a cession of

those lands shall be obtained, to proceed to mark and establish that boundary.

G. WYTHE, *C. H. B.*

Indorsed:

Address from the House of Burgesses, presented June 16th, 1770. In Lord Botetourt, (No. 34) of June 23d, 1770.

I hereby certify, that this is a true copy of the document deposited in her majesty's State Paper Office, London.

ROBT. LEMON,
Chief Clerk.

STATE PAPER OFFICE,
20th July, 1841.

L.

Lord Hillsborough to Lord Botetourt.

(Whitehall, Oct. 3d, 1770.—Draft.)

STATE PAPER OFFICE, }
America, Vol. 190. }

WHITEHALL, Oct. 3d, 1770.

MY LORD:—Your lordship's despatches, Nos. 34, 35, 36, and 37, have been received and laid before the king; and the journals of the Council and House of Burgesses, together with the acts passed in the last session of Assembly, having been by his majesty's command transmitted to the Board of Trade, I am persuaded their lordships will not fail to take every step that shall be proper in consequence thereof; and to lay before his majesty such of the laws as shall appear to require the royal confirmation, either from their having clauses suspending their execution, or from any other circumstances that shall make such confirmation necessary.

I have long seen and lamented, how greatly assemblies in America have been influenced, in their proceedings and deliberations, by the private correspondence of persons here, in England, who seem to have no other view but to promote distress to the mother country, by all possible means; and there is little doubt that both the association for non-importation and the petition of the House of Burgesses on the subject of revenue laws, and the regulation of the Courts of Admiralty, have been encouraged by advice of this sort; but I am at a loss to guess by what species of reasoning it is, that the House of Burgesses of Virginia can, in these cases, reconcile an implicit submission to the dictates of turbulent individuals,

with their own dignity, and with a conduct that seems, in every other respect, to have no other object than the public welfare.

I am convinced, from the fullest consideration, that the extension of the boundary line, as proposed by the address of the House of Burgesses to you in December last, would never have been consented to by the Cherokees; or, if their consent could have been obtained, that settlement, so far to the westward, would not only have been inconsistent with the true principles of policy, but would also have been the ground of continual jealousy and disputes; and therefore it was very pleasing to me, to find that the House had receded from its claim, and closed with the proposal contained in my letter to you of the 13th May, 1769. It would have been fortunate if this service could have been completed for the sum originally estimated, and that your lordship had not been under the necessity of adopting so unusual a measure as that of drawing upon his majesty's quit rents for the sum of £400, which Mr. Stuart thought fit to add to his estimate. The king, however, acquiesces in the motives which have induced your lordship to take this step, fully confiding that proper care will be taken that it shall not be drawn into precedent. I am very happy that the answer I gave to General Mackay on the subject of his recommendation of Mr. Wormley, is approved by your lordship. I agree with you in opinion that his distant residence from the seat of government is a good ground of objection to his being of the Council, and I shall not fail to communicate to the Board of Trade what your lordship proposes in regard to Mr. Diggs; but I do not apprehend that an appointment of that gentleman can take place until a vacancy happens, when I have no doubt that your recommendation will have its due weight.

I am, &c.

HILLSBOROUGH.

Indorsed:

Draft to Lord Botetourt, Whitehall, Oct. 3d, 1770. (No. 37.)

I hereby certify, that this is a true copy of the document deposited in her majesty's State Paper Office, London.

ROBT. LEMON,
Chief Clerk.

STATE PAPER OFFICE,
20th July, 1841.

M.

Congress of Chiefs of the Cherokee Nation, held at Lochaber, the 18th day of October, 1770.

STATE PAPER OFFICE, *America*, *Vol.* 191.

SOUTH CAROLINA:

At a congress of the principal chiefs of the Cherokee nation,

held at Lochaber, in the province of South Carolina, on the 18th day of October, in the year of our Lord one thousand seven hundred and seventy, by John Stuart, Esq., agent for, and superintendent of the affairs of the Indian nations in the Southern district of North America: a treaty, for a cession to his most sacred majesty, George the Third, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, &c., by the said nation of Cherokee Indians, of certain lands lying within the limits of the dominion of Virginia.

Whereas, by a treaty entered into and concluded at Hard Labour, the fourteenth day of October, in the year one thousand seven hundred and sixty-eight, by John Stuart, Esq., his majesty's agent for, and superintendent of the affairs of the Indian nations inhabiting the Southern district of North America, with the principal and ruling chiefs of the Cherokee nation, all the lands formerly claimed by and belonging to said nation of Indians, lying in the Province of Virginia, to the eastward of a line beginning at the boundary of the provinces of North Carolina and Virginia, running in a N. by E. course, to Col. Chiswell's mine, on the eastern bank of the Great Conhaway, and from thence in a straight line to the mouth of the said Great Conhaway river, where it discharges itself into the Ohio river, were ceded to his most sacred majesty, his heirs and successors; and whereas, by the above recited treaty, all the lands lying between Holstein's river and the line above specified, were determined to belong to the Cherokee nation, to the great loss and inconveniency of many of his majesty's subjects inhabiting the said lands; and representation of the same having been made to his majesty, by his excellency the Right Honorable Norborne, Baron de Botetourt, his majesty's lieutenant and governor-general of the dominion of Virginia, in consequence whereof, his majesty has been graciously pleased to signify his royal pleasure to John Stuart, Esq., his agent for, and superintendent of Indian affairs in the Southern district of North America, by an instruction contained in a letter from the right honorable the Earl of Hillsborough, one of his principal secretary's of state, dated the 13th May, 1769, to enter into a negociation with the Cherokees for establishing a new boundary line, beginning at the point where the North Carolina line terminates, and to run thence on a west course to Holstein river, where it is intersected by a continuation of the line dividing the provinces of North Carolina and Virginia, and thence a straight course to the confluence of the Great Conhaway and Ohio rivers.

Article 1st. Pursuant therefore to his majesty's orders to, and power and authority vested in John Stuart, Esq., agent for and superintendent of the affairs of the Indian tribes in the southern district, it is agreed upon by the said John Stuart, Esq., on behalf of his most sacred majesty, George the First, by the grace of God, of Great Britain, France and Ireland, king, defender of the faith, &c., and by the subscribing Cherokee chiefs and warriors, on be-

half of their said nation, in consideration of his majesty's paternal goodnes so often demonstrated to them, the said Cherokee Indians, and now from their affection and friendship for their brethren, the inhabitants of Virginia, as well as their earnest desire of removing as far as possible all cause of dispute between them and the said inhabitants, on account of encroachments on lands reserved by the said Indians for themselves, and also for a valuable consideration in various sorts of goods paid to them by the said John Stuart, Esq. on behalf of the dominion of Virginia: that the hereafter recited line be ratified and confirmed, and it is hereby ratified and confirmed accordingly: and it is by these presents firmly stipulated and agreed upon by the parties aforesaid, that a line beginning where the boundary line between the province of North Carolina, and the Cherokee hunting grounds terminates, and running thence in a west course to a point six miles east of Long Island, in Holstein's river; and thence to said river, six miles above the said Long Island; and thence in a course to the confluence of the Great *Great* Conhaway and Ohio rivers, shall remain and be deemed by all his majesty's white subjects, as well as all the Indians of the Cherokee nation, the true and just limits and boundaries of the lands reserved by the said nation of Indians for their own proper use, and dividing the same from the lands ceded by them to his majesty, within the limits of the province of Virginia, and that his majesty's white subjects inhabiting the provice of Virginia, shall not, upon any pretence whatever, settle beyond the said line; nor shall the said Indians make any settlements or encroachments on the lands which by this treaty they cede and confirm to his majesty; and it is further agreed, that as soon as his majesty's royal approbation of this treaty shall have been signified to the Governor of Virginia or superintendent, this treaty shall be carried into execution.

Article 2nd. And it is further agreed upon and stipulated by the contracting parties, that no alteration whatsoever shall henceforward be made in the boundary line above recited and now solemnly agreed upon, except such as may hereafter be found expedient and necessary for the mutual interests of both parties, and which alteration shall be made with the consent of the superintendent or such other person or persons as shall be authorised by his majesty, as well as with the consent and approbation of the Cherokee nation of Indians at a congress or general meeting of said Indians to be held for said purpose, and not in any other manner.

In testimony whereof, the said superintendent, on behalf of his majesty, and the underwritten Cherokee chiefs, on behalf of their nation, have signed and sealed this present treaty, at the time and place aforesaid.

Signed, JOHN STUART, [L. S.]
OUCANASTOLAH'S X mark. [L. S.]
ATTAHKULLAKULLA'S X mark. [L. S.]
KINNATATAH'S X mark. [L. S.]
CHUKANUNTA'S X mark. [L. S.]

SKYAGUSTA TUECHKUS	X mark.	[L. S.]
WOLF OF KUWUS'	X mark.	[L. S.]
KILLAGUSTA'S	X mark.	[L. S.]
KAYALAY'S	X mark.	[L. S.]
UKA YOULA'S	X mark.	[L. S.]
SKYAGUSTA TEFLOY'S	X mark.	[L. S.]
TURAPIM'S	X mark.	[L. S.]
EURY OF TUGALO'S	X mark.	[L. S.]
SCABLUSKY OF SUGAR TOWN'S	X mark.	[L. S.]
CHINISTAH OF SUGAR TOWN	X mark.	[L. S.]
CHINISTAH OF WATOGA	X mark.	[L. S.]
OTASITE HEYWASSEE	X mark.	[L. S.]

Ccp—Teste:

JOHN BLAIR, Jr. *Cl. Counc.*

(Endorsed.)

Copy—deed of cession—in Mr. President Nelson—(No 8) of 15th Dec. 1770.

I hereby certify that is a true copy of the document deposited in her majesty's state paper office, London.

ROBT. LEMON, *Chief Clerk.*

State Paper Office, 20th July, 1841.

N.

Lord Dunmore to the Earl of Hillsborough—Williamsburg, March, 1772.

State Paper Office, America, Vol. 192.

No. 7. *Williamsburg, March*, 1772.

My Lord,—The 18th of February, I was honoured with the duplicate of your lordship's letter, No. 5, dated the 4th of November, 1771, which is the only one that I have received from your lordship since my arrival in this government. I rejoice most sincerely with your lordship at the good accounts which are received of his royal highness, the Duke of Gloucester's health. The boundary line between this colony and the hunting grounds of the Cherokee Indians hath been run, a plan of which I herewith transmit to your lordship. This service was performed by a Mr. Donelson and others appointed for that purpose, who were attended by several chiefs of the Indians concerned; and therefore we have good ground of hope that no dispute for the future will arise on the subject between us and these Indians.

Your lordship will observe that this line is not run exactly according to the instructions formerly sent by your lordship to Mr. Stu-

art, the superintendent of Indian affairs, but that it takes in a larger tract of country than by those instructions they had permission to include, though greatly short of what the colony, by their memorial to Lord Botetourt which has been transmitted to your lordship, were desirous of obtaining.

The commissioners, upon their entering on this business, found the country through which the proposed line was to run, so mountainous, rugged and difficult of access, that they could not have accomplished it in many months, nor without an expense that would have been enormous; but they have nevertheless conducted it as nearly as possible conformable to their orders, having only deviated from them, as your lordship will see by the map, by continuing from the point on Holstein's river, where it is intersected by the division line of this colony and North Carolina, down that river a small distance, to a place from whence they had an easier access than any where else to be found, to the head of Louisa river, which they follow to its confluence with the Ohio. Thus, except where they cross from Holstein's to Louisa river, which being of no great distance and the country passable, they have been able to be particularly careful in marking, they have established a natural boundary that can never be mistaken, and must forever banish all dispute and contention about it; and by this line are taken in a great number of families who had settled without the intended line, and who, if that had been adopted, would be excluded from the government and protection of this colony, to their great detriment, if not utter ruin. The commissioners thought these reasons would justify their making an alteration which is evidently calculated to answer so many good purposes, and more especially as it was done not only with the consent of the Indians themselves, but at their earnest desire, as the talk which I transmit to your lordship will testify. It will give great concern to the colony if they find that his majesty disapproves of this line; but if it should be reversed, there is the strongest reason to fear that it will occasion the renewal of much confusion and bloodshed in that part of the country; as a boundary which Indians of several nations do sofrequently pass, marked only by trees, must cause eternal disputes between them and our people, who are hunters like them, and at best but on a very bad footing together; moreover, it would necessarily be attended with much expense to the colony, and very considerable loss to a number of poor people. Therefore, I think it my duty to beseech that your lordship will use your endeavour to obtain the royal confirmation of it; and I likewise must entreat that an answer may be returned to me as soon as possible, the country being extremely anxious about this matter, as the Indians who have been promised that they should in the spring be fully satisfied about it, may probably grow impatient of the delay.

Whatever boundary be determined upon, there will be a very considerable tract of country unpatented, and his majesty's council

are of opinion that the Governor, by his instructions, is prevented from granting those vacant lands; the consequence of which preventation is manifestly extremely detrimental to the colony, and prejudicial to the interests of his majesty; for the people of the back parts of these and of the neighbouring colonies, finding that grants are not to be obtained, do seat themselves, without any formalities, wherever they like best; by which means the good lands will be all occupied, and shortly nothing but the bad remain; whereas, if restrictions did not prevent it, the good and the bad would be granted together, and the people will be satisfied, to the great improvement of the whole country, and increase of his majesty's quit rents; but as it is, what remains, and which must be considerable in a mountainous country, will never be taken up at all, by which it is evident how much the country must suffer, and his majesty's quit rents fail of the advancement which it ought to acquire.

The ill success of the pains which I took, and the representations which I in consequence made to your lordship upon the restrictions which were laid upon me in my other government, with respect to the New Hampshire lands, would have prevented me from again troubling your lordship on the like subject, if the emolument which would result to me thereby was not so insignificant, that I can with safety assure your lordship I have now no other motive than my duty to his majesty and zeal for his interest. I transmit to your lordship my speech, and the addresses of the council and the house of burgesses on the opening of the assembly on the 10th of February, which still continues sitting. I also enclose the journals of the council from the 17th of July to the beginning of this session of assembly.

This letter was written with intention to be dispatched soon after the meeting of the assembly, but no ship having sailed since that time, I have an opportunity of adding, that in the progress of our business the greatest harmony and most perfect good temper have subsisted between the different branches of the legislature and among each other, and that some new laws are likely to result which will produce very advantageous effects to the country, and I am in hopes will prove agreeable to his majesty and his ministers, as also that I shall obtain the satisfaction of having my conduct hitherto approved of by both; my endeavours to deserve it shall never cease. I have since received your lordship's original letter No. 5.

I enclose a petition of sundry people, in behalf of two persons whose recognizances have been forfeited by the imprudence of a man for whom they became securities for his good behaviour; also, a letter and proceeding of the general court referred to therein, from a gentleman who is the representative of the county where two other persons live whom he applies for. I must beg your lordship's intercession in both cases, the parties being utterly unable to pay these several penalties, without the ruin of their numerous families, and I hope through your lordship's means to be authorised to relieve

these poor people, according to the prayer of the said petition and letter.

I am, my lord, your lordship's
Most obedient, humble servant,
(Signed,) DUNMORE.

P. S. I have laid before the assembly your lordship's letter relative to a copper coinage, and as soon as they come to any resolution upon it, I will communicate it to your lordship.
(Signed,) D.

(Endorsed.)

Williamsburgh, Virginia, March 1772—Earl of Dunmore (No. 7.)

I hereby certify that this is a true copy of the original deposited in her majesty's state paper office, London.
ROBERT LEMON, *Chief Clerk.*
State Paper Office, 20th July, 1841.

CONSULATE OF THE UNITED STATES OF AMERICA, *London.*

I, Thomas Aspinwall, Consul of the United States of America for London and the dependencies thereof, do hereby make known and certify to all whom it may concern, that the seal affixed to the annexed certificate marked with the letter "A." is the seal of the office of mayoralty of the said city of London, & that the signature, "Tho. Johnson," at foot of the affidavit (marked B,) annexed to said certificate, under the said seal of mayoralty, is the true and genuine signature of the Right Hon'ble Thomas Johnson, Lord Mayor and Chief Magistrate of the City of London, aforesaid; and I further certify that the signature, "Robt. Lemon," subscribed to the certificates at foot of the twelve papers writing, likewise hereunto annexed under said seal of mayoralty, and marked respectively with the letters, "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," "M," and "N," is the true and genuine signature of Robert Lemon, the chief clerk in her majesty's state paper office, aad also that the seal official to said certificates is the seal of said state paper office, and that to all acts so authenticated, as annexed, full faith and credit are and ought to be given in judicature and thereout.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Consulate of the United States in London aforesaid, this third day of August, in the year of our Lord one thousand eight hundred and forty-one, and in the sixty-sixth year of the independence of the said United States.
[L. S.]
THOS. ASPINWALL.

The following are the exhibits referred to and filed by defendants in this cause, to wit:

Copy, survey for Geo. R. Clark, 36,962 acres.

[Here follows the survey.]

Surveyed for George Rogers Clark 36,962 acres of land by virtue of 14 Treasury warrants, No. 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, and 1826 acres of Nathaniel Randolph, lying in Lyncoln county, on the Ohio, beginning at (A,) 3 maples, 2 ashes and a hackberry on the bank of the Ohio at the mouth of the Tennessee river; running from thence S. 16 W. 1280 po., crossing a creek to B, two white oaks and 3 maples, standing on the bank of the creek that empties into the Ohio, at the lower end of the Island at the mouth of Tennessee; thence N. 74. W. 3840 po., crossing a fork of Massack Creek, at 1830 po., another at 2340 po., a branch at 3000 poles, and another at 3396 po., to 5 black oak saplings in head of a hollow running north near the top of a high ridge; thence N. 16, E. 1800 poles crossing a branch of 4 mile creek and a pond to D., a black walnut, elm and hoopwood on the Bank of the Ohio, about 3 miles below Fort Massac, thence running up the Ohio with the several meanders 4480 poles to the beginning.

G. CLAY, *Asst.*
JAMES THOMPSON, *S. L. C.*

June 7th, 1784.

A copy—attest: JOHN M. FOSTER, *R. L. O.*
By RICH'D LONG, *D. R.*

Copy—Entry of Geo. R. Clarke, 74,962 acres.

October 26, 1780.

Col. George Rogers Clarke offers to make the following amendment to his several entrys of 74,962 acres—entered 18th of May, 1780, viz: to begin on the Ohio at the mouth of the Tennessee river, running down the Ohio, bounded by the drowned lands of said river and waters of the Mississippi, for the quantity of 74,962 acres in one or more surveys. I do hereby certify, that the above,

entry in the name of the Col. George Rogers Clarke, is a true copy, as appears from the Jefferson entry books; but was made while Kentucky county.

Given under my hand this fifth day of November, 1840.

JNO. M. FOSTER, *R. L. O.*
By RICH'D LONG, *D. R.*

Copy—Entry of Geo. R. Clarke, 101,920 acres.

October 29th, 1781.

George Rogers Clark, Brigad'r Gen'l in behalf of the State of Virginia, enters 101,920 acres upon 182 Treasury warrants, five hundred and sixty acres each, to be laid off in one or more surveys. Beginning at the mouth of a creek at the head of the first island in the Mississippi, below the mouth of the Ohio; thence down the Mississippi to the mouth of Mayfield creek, cornering in at the town of Clarksville; thence up said creek to the first highland bounded, thence downwards by the drowned lands of the Mississippi, to the Carolina line, to extend eastwardly on the said line, and up the creek *began or* for quantity; so that the lands about the borough of Clarksville shall extend at least eight miles from the river, except that distance should interfere with the barrens.

A copy—Attest: JAMES ROBINSON, *R. L. O.*
By RICH'D LONG, *D. R.*

Copy—Entry of Geo. R. Clarke for 1000 acres.

May 18th, 1780.

George Rogers Clark, ass'ee, &c., enters 1000 acres upon a Treasury warrant on the bank of the Ohio, opposite to a small island, and on the dividing ridge between the waters of a creek running into the Ohio, not far below said island, and the waters of a creek running in above said island, to begin at the before mentioned ridge, on the river bank, and running down the same, binding thereon westwardly, and then at right angles to the same or general course of the river, and back eastwardly to the said ridge for quantity.

Same for 1000 acres.

Also 1000 acres, to begin at the most western courses of the above mentioned tract on the river bank and extend down the said river, bounding thereon, running the different courses, then southwardly and eastwardly to run with the lower line of the above entry out, for quantity.

Same for 1000 acres.

Also 1000 acres, to begin at the lower corner of the above entry on the river bank, and with its different courses, binding thereon

down the same westwardly, by binding the first line of each entry on the bank of the Ohio, laying one thousand acre tract after another successively, till they extend a slash or some drowned lands of the said river; thence the different courses of said drowned lands, bounding by the same southwardly and westwardly, so as not to interfere with older legal claims. In this case to begin at the southernmost corner of the first tract herein mentioned, and with the said ridge that bounds the first tract, on the east side or end of the first tract; from thence southerly one mile, if not interfering with the before mentioned claims, and bounding northerly on the first tracts mentioned in this location, running westwardly for quantity, so continuing to bind 1000 acre tract by another, as is directed by law, the amount of 71,962 acres.

Copies—Attest: JNO. M. FOSTER, *R. L. O.*
By E. A. MACURDY, *D. R.*

Amendm't to Entries of Geo. R. Clark.

October 26th, 1780.

Col. George Rogers Clark offers to make the following amendment to his several entries of 74,962 acres, entered 18th May, 1780, viz: to begin on the Ohio, at the mouth of the Tennessee river, running down the Ohio river, bounded by the drowned lands of said river and the waters of the Mississippi, for quantity of 74,962 acres, in one or more surveys. N. B. The 74,962 acres should be 73,962 acres, but cannot be altered until a copy given out is returned.

A copy—Attest: JNO. M. FOSTER, *R. L. O.*
By E. A. MACURDY, *D. R.*

Copy, Survey of Geo. R. Clark, 37,000 acres.

[Here follows Survey.]

Surveyed for Brig. Gen'l George R. Clarke, 37,000 acres of land, by virtue of twenty-five treasury warrants, Nos. 1307, 1308, 1309, 1310, 1311, 1314, 1815, 1816, 1817, 1818, 1819, 1820, 1812, 1822, 1823, 1824, 1825, 1827, 1829, 1830, 1831, 1832, 1833, 1834, and 1835,—lying, situate and being in the County of Lincoln, and on the Ohio: Beginning at (A) a black-walnut, elm and hoop-wood standing on the bank of the Ohio, and corner to his former survey of 36,962 acres, running from thence down with the seev-

ral meanders of the Ohio, N. 55 W. 104 poles, N. 70 W. 194 po., N. 66 W. 126 poles, N. 70 W. 320 poles, N. 65 W. 88 poles, N. 75 W. 224 poles, N. 70 W. 450 poles, N. 80 W. 704 poles, N. 85 W. 80 poles, N. 80 W. 236 poles, west 290 poles, S. 85 W. 16 poles, S. 77 W. 320 poles, S. 70 W. 210 poles, S. 55 W. 320 poles, S. 40 W. 534 poles, to B, two maples and a cotton-wood tree, standing at the lower side of a small creek, and the fifth below Massac Fort and creek, and corner to George Smith; running from thence with his line S. 58 E. 2166 poles, to his corner at (C.) a white-oak and hickory by a small drain running west; thence S. 74 E. 175 poles to (D.) five black-oak saplings, the south-west corner of his former survey; thence with his line N. 16 E. 1800 poles, to the beginning.

GREEN CLAY,
JAMES THOMAS, *S. L. C.*

June 8th, 1784.

Vari. 1° 30 east.

A copy—Test: AUSTIN P. COX, *D. R. L. O.*
For JNO. M. FOSTER, *R. L. O.*

Deed, Geo. R. Clark to William Clark.

This indenture, made this 28th day of July, one thousand eight hundred and three, between George Rogers Clark, of the county of Jefferson, and the Commonwealth of Kentucky, of the one part, and William Clark, of the said county and State, of the other part, witnesseth: that the said George Rogers Clark, for and in consideration of the sum of twenty-one hundred dollars, (sundry services by the said William,) to him in hand paid by the said William, the receipt whereof he doth hereby acknowledge, he, the said George Rogers, hath granted, bargained and sold, and by these presents doth hereby grant, bargain, sell, alien, and confirm unto the said William, his heirs and assigns, forever, two certain tracts or parcels of land, containing seventy-three thousand nine hundred and sixty-two acres, more or less, situate, lying and being in the County of Livingston, on the Ohio, below the Tennessee river, and bounded as follows, viz: Beginning at three maples, two ashes and a hackberry, on the bank of the Ohio at the mouth of Tennessee river; running from thence S. 16° W. 1280 poles, crossing a creek that empties into the Ohio at the lower end of the island, at the mouth of Tennessee river; thence N. 74° west 5598 poles, crossing a fork of Massac creek at 1830 poles, another at 2340 poles, a branch at 3000 poles, and another at 3396 poles, passing a corner, five black-oak saplings in the head of a hollow, at 3840 poles to a white-ash and hickory by a small drain, corner to George Smith; running from thence with his line north 58° W. 2166 poles to two maples and a cotton-wood tree, standing on the Ohio, at the lower

side of a small creek, and the fifth below Massac; running from thence up the Ohio, binding thereon 8640 poles, to the beginning, —to have and to hold the said tract or parcel of land, to the said William Clark, his and assigns, to his and their only proper use and behoof; and the said George Rogers Clarke, for himself and his heirs, the said two tracts or parcels of land, unto the said William Clarke, his heirs and assigns, shall and will warrant and forever defend, against the claims of him and his heirs, and all other person or persons claiming by, from, or under him, except that part deeded to Levi Hollingworth and Harry Innis, &c.; and the said George Rogers Clark, for himself and his heirs, doth covenant to and with the said William Clark, his heirs and assigns, that in case any part of the said tract or tracts of land shall be lost by other , that then he, the said George Rogers Clark, will refund so much of the purchase money as will be in the same proportion given for any part that may be lost.

In witness whereof, the said George Rogers Clark hath hereunto set his hand and seal, the day and year before written. (Interlineation in the 31st line.)

G. R. CLARK, [L. S.]

Witness—Signed, seald and del'd in presence of

ROB'T K. MOORE, WORDEN POPE,
CHARLES ANDERSON, COLLY TAYLOR,
ISAAC ROBERTSON, ANTHONY REYNOLDS,
W. AIKIN, GEO. WILSON,
GEORGE POPE, EDW'D DENNY.

STATE OF KENTUCKY, *sct:*

I, Achilles Sneed, Clerk of the Court of Appeals, for the State afores'd, being duly authorized by law to receive, admit, and record deeds and other writings in my office, do hereby certify that the foregoing deed was produced to me, in my office in Frankfort, on the 12th day of November, 1803, and proved by the oath of Worden Pope; and on the 17th day of same month, was further proved by the oath of George Wilson; and on the 28th day of same month aforesaid, was further and fully proved by the oath of William Aikin, being three subscribing witnesses thereto, to be the act and deed of George Rogers Clark, the grantor named, and that the same is truly recorded.

In testimony whereof, I have hereunto subscribed my name, the day and year last aforesaid.

ACHILLES SNEED, *C. C. A.*

A copy—Attest: I. SWIGERT, *C. C. A.*

Deed, William Clark, &c., to George Woolfolk.

This indenture, made this 14th day of June, one thousand eight

hundred and twenty-seven, William Clark, William Crowan and Lucy, his wife, Owen Gwathmey, John Gwathmey, Samuel Gwathmey, George C. Gwathmey, Temple Gwathmey, Isaac R. Gwathmey, George Woolfolk and Catharine, his wife, Richard C. Anderson, Jr., and Betsey, his wife, Thomas Bullett and Dianna, his wife, Peter Priest and his wife, Frances Jones, William H. Booth, Dennis Fitzhugh and Frances, his wife, John Logan and Ann, his wife, Cecelia Anderson, John H. Clark, Isaac Clark, William Clark, George W. Clark, Benjamin Temple and Eleanor, his wife, and James A. Pearce and Ann, his wife, by Samuel Dickinson, a commissioner, of the first part, and George Woolfolk, of the second part:—whereas, at the October term of the Jefferson Circuit Court, in the year 1824, the said court made the following decree in the case in which Edmund H. Taylor, as executor of John Thruston, dec'd, is complainant, and the parties of the first part to these presents are defendants, to wit: "This day came the parties, by their counsel, and the court being now sufficiently advised of and concerning the premises, are of opinion that the heirs of George Rogers Clark have no title to the mortgaged premises in complainant's bill mentioned; and that the conveyance set up by the defendant, William Clark, to the two tracts of land in said bill mentioned, one of thirty-seven thousand acres, and the other of thirty-six thousand nine hundred *acres* and sixty-two acres, both lying on the Ohio river, and patented to said George Rogers Clark, in his lifetime, by patents bearing date the 15th September, 1795, is fraudulent as to the creditors of said George Rogers Clark, and, at most, can only operate as a mortgage to secure to said William Clark the payment of twenty-one hundred dollars, the consideration expressed in said conveyance, with interest thereon at six per centum per annum from the 28th day of July, 1803, until payment; and that the said George Rogers Clark, in his lifetime, had an equity of redemption in said premises, and that the same has descended upon, and is now assets in the hands of said heirs for the payment of the debts of said George Rogers Clark: it is, therefore, decreed and ordered that the said lands, or so much of both or either of said tracts be sold at public auction in Louisville, to the highest bidder, upon a credit of two years, the purchaser giving bond, with good security, for the payment of the purchase money with interest, as will be sufficient to satisfy and pay the complainant the sum of five hundred and thirty-five pounds three shillings and five pence, with interest thereon at six per cent. per annum from the last day of May, in the year 1804, until payment, being the debt in the complainant's bill and mortgage mentioned, and also the costs by the complainant in this suit,—the sale to be made subject to the mortgage or lien of said William Clark upon said lands, for the payment of $2,100 aforesaid, with interest thereon as aforesaid, to him; and it is further ordered and decreed, that Samuel Dickinson be appointed a commissioner, and unless the

said sum of £534 3*s.* 5*d.*, with interest thereon as aforesaid, and the costs aforesaid, be paid to the complainant on or before the first day of January next, then said commissioner make sale as above directed, of the land aforesaid, on such day and place in Louisville as he shall appoint, first advertising the time and place of sale by the space of sixty days, in some newspaper printed in Louisville afs'd, and also at the court-house door in said town; and that he make report of his proceedings herein to the next court,—from which decree the said defendants pray and appeal to the honorable the Court of Appeals of this State, which is granted them upon their entering into bond with Charles W. Thurston, their security, in the clerk's office of this court, within thirty days, in the penalty of ten thousand dollars; conditioned that the said defendants shall prosecute the said appeal with effect, and that on failure thereof, *that* they shall pay to the complainant the amount of the aforesaid decree, and also all damages and costs which shall or may be awarded against the said defendants by the said Court of Appeals in this cause. At the March term, 1826, of the same court, the following decree was made: "This day came the parties by their counsel, and on the motion of the said defts., and by and with the consent of the said complainant, the said defendants waive the appeal prayed in this cause by them, and leave is given the said complainant to proceed on the decree rendered in this cause, according to the provisions thereof, which is ordered accordingly." And the parties of the first part, failing to comply as ordered and decreed, the commissioner therein named to make sale of the lands mentioned in the bill, as well as the mortgage, advertised the same, in pursuance of the foregoing decree, and sold the whole of said lands in pursuance of said decree, and according to law, as will more fully appear by the report of said sale made to the court. And the said court, on the reception of the report aforesaid, made and recorded the following decree at June term, 1827, to wit: "It appearing to the satisfaction of the court that George Woolfolk was the purchaser of the lands decreed to be sold herein, and that such appears to be the fact by the commissioner's report; and by an order in this cause, made at the October term, 1826, of this court, William Clark was stated to have been the purchaser of the said lands, which was not the case; the court now corrects said order at October term, 1826, and confirms hereby the commissioner's report herein, returned at a former term of this court; and the court now decrees and orders that the defendants do, on or before the 9th day of the present term of this court, convey by deeds in fee simple, conveying their title only to said Woolfolk, and the said lands sold and purchased by him; that *that* on failure thereof, Sam'l Dickinson be, and he is hereby appointed a commissioner to do it for them." And the defendants failing to convey as ordered, now therefore, this indenture witnesseth, that for and in consideration of the premises, the

parties of the first part, by the commissioner aforesaid, hath granted, bargained and sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents doth grant, bargain and sell, alien, release, enfeoff, convey and confirm to the party of the second part, the following tract or parcel of land, lying on the Ohio river, included in the following bounds, viz: "Beginning at three maples, two ashes and a hickory on the bank of the Ohio, at the mouth of the Tennessee river; running from thence south 16 degrees, west 1280 poles, crossing a creek to two white-oaks and three maples, standing on the bank of the creek that empties into the Ohio, at the lower end of the island at the mouth of Tennessee; thence north 74 degrees, west 5598 poles, crossing a fork of Massac creek at 1830 poles, another at 2340 poles, a branch at 3000 poles, and another at 3396 poles, passing a corner, five black-oak saplings in the head of a hollow at 3840 to a white-oak and hickory by a small drain, corner to George Smith, running from thence, with his line, north 58 degrees west 2156 poles, to two maples and a cotton-wood tree standing on the Ohio river, at the lower side of a small creek and the fifth below Massac; running from thence up the Ohio, binding thereon, 8640 poles, to the beginning,"—to have and to hold the same, with all and singular the appurtenances thereto belonging, to them and their heirs, forever. The parties of the first part hereby conveys their right, title, interest and estate, in and to the foregoing land, binding themselves and their heirs, &c., to defend the same from the claim or claims of all and every person claiming or to claim the same, by, through or from them, or either of them, and no other person or persons whatsoever.

In testimony whereof, the parties of the first part, by Sam'l Dickinson, the commissioner for this purpose, hath hereunto set their hands and seals, on the day and year first above written.

WILLIAM CLARK, [L. S.]
By Samuel Dickinson, Commissioner.
WILLIAM CROGHAN, [L. S.]
By Sam. Dickinson, Commissioner.
LUCY CROWAN, [L. S.]
By Sam. Dickinson, Commissioner.
OWEN GWATHMEY, [L. S.]
By Sam'l Dickinson, Commissioner.
JOHN GWATHMEY, [L. S.]
By Sam'l Dickinson, Commissioner.
SAM'L GWATHMEY, [L. S.]
By Sam'l Dickinson, Commissioner.
GEORGE C. GWATHMEY, [L. S.]
By Sam'l Dickinson, Commissioner.
TEMPLE GWATHMEY, [L. S.]
By Sam'l Dickinson, Commissioner.
ISAAC R. GWATHMEY, [L. S.]
By Sam'l Dickinson, Commissioner.

GEORGE WOOLFOLK, [L. S.]
By Sam'l Dickinson, Commissioner.
CATHARINE WOOLFOLK, [L. S.]
By Sam'l Dickinson, Commissioner.
RICH'D C. ANDERSON, JR., [L. S.]
By Sam. Dickinson, Commissioner.
BETSEY ANDERSON, [L. S.]
By Sam. Dickinson, Commissioner.
THOMAS BULLITT, [L. S.]
By Sam'l Dickinson, Commissioner.
DIANNA M. BULLITT, [L. S.]
By Sam'l Dickinson, Commissioner.
PETER PRIOST, [L. S.]
By Sam'l Dickinson, Commissioner.
LUCY PRIOST, [L. S.]
By Sam'l Dickinson, Commissioner.
FRANCES JONES, [L. S.]
By Sam'l Dickinson, Commissioner.
WILLIAM H. BOOTH, [L. S.]
By Sam'l Dickinson, Commissioner.
DENNIS FITZHUGH, [L. S.]
By Sam. Dickinson, Commissioner.
FRANCES FITZHUGH, [L. S.]
By Sam. Dickinson, Commissioner.
JOHN LOGAN, [L. S.]
By Samuel Dickinson, Commissioner.
ANN LOGAN, [L. S.]
By Samuel Dickinson, Commissioner.
CECELIA ANDERSON, [L. S.]
By Samuel Dickinson, Commissioner.
JOHN H. CLARK, [L. S.]
By Samuel Dickinson, Commissioner.
ISAAC CLARK, [L. S.]
By Samuel Dickinson, Commissioner.
WILLIAM CLARK, [L. S.]
By Samuel Dickinson, Commissioner.
GEORGE W. CLARK, [L. S.]
By Sam'l Dickinson, Commissioner.
BENJAMIN TEMPLE, [L. S.]
By Sam'l Dickinson, Commissioner.
ELENOR TEMPLE, [L. S.]
By Sam'l Dickinson, Commissioner.
JAMES A. PEARCE, [L. S.]
By Sam'l Dickinson, Commissioner.
ANN PEARCE, [L. S.]
By Sam'l Dickinson, Commissioner.

STATE OF KENTUCKY:

At a Circuit Court continued and held for the Jefferson circuit, in the State aforesaid, at the court-house in Louisville, on the sixteenth day of June, one thousand eight hundred and twenty-seven, the within deed was produced in court, and being examined and approved of by the court, and acknowledged by Samuel Dickinson, the commissioner appointed for that purpose, to be the act and deed of the parties of the first part, was ordered to be recorded by the clerk of our said court, in his office, which is done accordingly.

Test: WORDEN POPE.

KENTUCKY, *McCracken County, sct:*

I, Braxton Small, Clerk of the County Court for the county aforesaid, do hereby certify that this deed, from William Clark and others, by Samuel Dickinson, commissioner, to George Woolfolk, was, on the 22d day of July last past, produced to me in my office, and ordered to be recorded.

In testimony whereof, and that the same, together with the certificate of the clerk of the Jefferson Circuit Court thereon, and this certificate, stand truly recorded in my office, I have hereunto set my hand, this 4th day of August, 1830.

B. SMALL.

Woolfolk and wife to William Clark—Deed.

This indenture, made this 13th October, in the year 1827, between George Woolfolk and Catharine, his wife, of Shelbyville, Kentucky, of the one part, and William Clark, of the city of St. Louis, of State of Missouri, of the other part, witnesseth: that for and in consideration of the sum of five hundred dollars in hand paid to the said Woolfolk, by the said William Clark, the receipt whereof the said Woolfolk doth hereby acknowledge, the said Woolfolk hath this day bargained and sold, and by these presents doth bargain, sell, alien and convey unto the said Clark, his heirs, &c., forever, the following tract of land in the county of McCracken, and State of Kentucky, beginning at three maples, three ashes and a hackberry on the bank of the Ohio at the mouth of the Tennessee river, running from thence south 16 degrees west 1280 poles, crossing a creek to two white-oaks and three maples standing on the bank of a creek that empties into the Ohio at the lower end of the island at the mouth of Tennessee; thence north 74 degrees west 5598 poles, crossing a fork of Massac creek at 1830 poles, another at 2340 poles, a branch at 3000 poles, and another at 3396 poles, passing a corner, five black-oak saplings in the head of a hollow, at 3840 poles, to a white-oak and hickory by a small drain, corner to George Smith; running from thence with

his line, north 58 degrees, west 2166 poles, to two maples and a cotton-wood tree standing on the Ohio river at the lower side of a small creek, and the fifth below Massac; running from thence up the river, binding thereon, 8640 poles, to the beginning,—to have and to hold the said land within the above described boundary, unto the said Clark, his heirs, &c., forever; and the said George and Catharine, for themselves, their heirs, &c., do covenant that they will forever warrant and defend the title of said land to the said Clark, his heirs, &c., against the claims of all persons claiming through or under them, the said George and Catharine, their heirs, &c.

In witness whereof, they set their hand and seal, the date above written.

G. WOOLFOLK, [L. S.]
CATH. T. WOOLFOLK. [L. S.]

I, Worden Pope, clerk of the county court of Jefferson county, in the State of Kentucky, do certify, that on this day the foregoing deed was produced to me in my office, and acknowledged and delivered by the said George Woolfolk, and Catharine Woolfolk, his wife, to be their act and deed; that I examined the said Catharine privily, and apart from her said husband, and having shown and explained the said deed to her, she declared, that she had signed, sealed, delivered and acknowledged the same, as and for her act and deed, of her own free will and consent, without the threats, persuasions or compulsions of her said husband, and that she was willing that the said deed should be recorded, and did not wish to retract her said acknowledgement, and that I have recorded the said deed in my said office.

Witness my hand this thirteenth day of October, one thousand eight hundred and twenty-seven.

WORDEN POPE.

KENTUCKY, *M'Cracken County, sct.*

I, Braxton Small, clerk of the county court for the county aforesaid, do hereby certify, that this deed from George Woolfolk and Catharine, his wife, to William Clarke, was, on the 22d day of July last, produced to me in my office, and ordered to be recorded.

In testimony whereof, and that the same, together with the certificate of acknowledgement and relinquishment of dower thereon, and this certificate, stand truly recorded in my office, I have hereunto set my hand this 4th day of August, 1830.

B. SMALL.

VIRGINIA, *to wit;*

I, John M. Patton, Lieutenant Governor of the State aforesaid,

(acting in the absence of the governor from the seat of government,) do hereby certify and make known unto all whom it may concern, that William H. Richardson, whose name is subscribed to the annexed certificate, is and was at the time of subscribing the same, secretary of the Commonwealth of Virginia, duly appointed and qualified according to law, and to all his official acts as such, full faith, credit, and authority are due and ought to be given.

In testimony whereof, I have subscribed my name, and caused the great seal of the State to be affixed. Done [L. S.] at the City of Richmond, the eighth day of October, in the year of our Lord one thousand eight hundred and forty, and of the Commonwealth the sixty-fifth.

By the Lieutenant Governor,

JNO. M. PATTON.

WM. H. RICHARDSON, *Sect'y. Comm'th, Keeper of Seal.*

Monday, February 9th, 1784.

Present: his Excellency, Beverly Randolph, John Marshall, Sampson Matthews, William Short, Esquires.

Appointment of George R. Clarke, Surveyor.

General George Rogers Clark, having been appointed the principal surveyor, on behalf of the Virginia State line, and producing a certificate from the professors of William and Mary College, of his ability to execute that office, the governor gave him a commission agreeable to the act of assembly, for surveying the officers and soldiers' lands; and he is required to give bond with security in the penalty of three thousand pounds, before the court of Jefferson or Fayette county, for the faithful discharge of his duty.

EXECUTIVE DEPARTMENT.

Richmond, Virginia, October 8th, 1840.

I, William H. Richardson, secretary of the Commonwealth of Virginia, do hereby certify, that the above is truly copied from the executive journal of the State for the ninth day of February, seventeen hundred and eighty-four.

Given under my hand the date above.

WM. H. RICHARDSON,
Sec'y. Comm'th.

UNITED STATES OF AMERICA,
Department of State.

Treaties with Indians.

To all to whom these presents shall come:

I certify that the documents hereunto annexed are true copies of the original papers, now on file in this department.

In testimony whereof, I, Fletcher Webster, acting Secretary of State of the United States, have hereunto subscribed my name, and caused the seal of the department of State to be affixed. Done at the City of Washington, this fourth day of May, A. D. 1841, and of the Independence of the United States of America, the sixty-fifth.

[L. S.]

FLETCHER WEBSTER,
Acting Sec'y.

(Endorsed)—No. 10.

To all whom it may concern:

The Great Warrior of Chote is the bearer hereof; he intends to hunt bearer from hence to the Long Island and thereabouts, until the arrival of the Virginia commissioners, who are appointed by that government to run the boundary line, and will be at the Long Island some time in May next. It is therefore required, that all persons will use him and his people with hospitality and civility, they behaving as becometh friends and allies. It is likewise hoped, that if he should meet with any hunting parties, that they will remove from the lands, which are reserved for the Cherokees.

Given under my hand and seal at Toguch, 13th day of May, 1771.

"Virginia State Papers, vol. 2, 1781—1789."

ALEXR. CAMERON,
Dep'y. Supr't.

(Endorsed)—No. 10. ALEXANDER CAMERON.

Lochabar, 5th February, 1772.

Friends and Brothers,—When I left the nation I thought that I would have been able to give you some accounts from your father, Capt. Stuart, in and about this time; but I have not heard from him since I saw you, altho' I wrote to him about every thing that we transacted to the northward, as well as in the nation last summer and fall. He is still in Mobile, but he is expected in Charlestown in the spring.

Brothers, I have, agreeably to my promise, sent in my brother to Virginia to acquaint the governor and his beloved men, that the course of the boundary line to where we left it on the Cedar river, was agreeable, and approved of by all your chiefs and beloved men, and to remind Colonel Donelson of his promise of sending a few presents to the Long Island, upon Holston, in the Spring.

But as my brother is not yet returned, I cannot inform you of what their answer may be, although I doubt not Colonel Donelson will represent your generosity to the governor and wise men, in the strongest terms, and that his talk will have the greatest weight with them. I am daily in expectation of my brother's return, for he has been gone upwards of two moons from hence, and upon his arrival, I shall either visit you, or communicate to you whatever talks I shall receive from Virginia.

I am sorry to inform you, brothers, that I have been told, that the path to Virginia has been spoiled this winter, by some of your young men shedding of the blood of white people from that province. I make no doubt, that they have been stealing your deer and game from you, contrary to the great king's talks, and also the great and ruling men of Virginia; and if you had taken themselves, their guns, horses and leather, you would have been justified; but to take away lives, is what the great king will not suffer; but whenever any of his children commits a crime, they must be examined and tried, by a particular set of wise men, that he hath chosen purposely for that purpose, and if found guilty by sufficient proofs or evidences, who were eye witnesses to any bad acts, then such person, or persons so found guilty, shall be killed in the presence of hundreds of people. I need not tell you, brothers, what conditions you signed at the peace. I hope you will not suffer young, foolish men to involve your whole nation into trouble, by acting as they think proper. There is one thing more I am to mention to you, and that I have been just now informed of. You cannot forget your promises to your father, Captain Stuart, of never granting any lands without first informing him of it.

You seemed sorry to have given the lands to the traders, without first acquainting him of your design, and then you told me at my home, Taguch, that you never should transact any business without his or my knowledge; but I am now told you have given away a tract of twelve miles square, on Holston's river, to the trader who was settled there below the Long Island; but this I do not give the least credit to, nor never shall until I hear it from yourselves, for I have known you a long time and always found your tongues and mind go together. In token of this talk being sincere and from your brother, I send you a white string of wampum.

I remain, as I always shall, your firm friend and brother,

ALEX'R. CAMERON.

John Vaun conveys this to you, whom I have sent to talk, and receive any public talks that you may have to communicate.

A. C. [L. S.]

(Endorsed.) John Stuart, superin., to Ouconestotah.

To OUCONESTOTAH, Great War Chief of the Cherokee Nation :

Friend and Brother,—I received your message by Oustinekas, who also at the same time produced your medal and commission, with a string of white wampum. I should have been glad to have shaken hands and smoked with you; but as you was engaged at a meeting with messengers from other nations, and had my friend, Ottassu Mico, by the hand, and were set down together on a white seat at Chota, I looked upon your medal, the same as if you were present in person; I have the pleasure to acquaint you, that every thing is finished in a friendly manner. I send you herewith an account of the boundary agreed upon, and your warriors will be able to describe it to you very particularly; and as persons are appointed to mark it immediately, when finished a plan shall be sent your nation.

I also send you a copy of the Governor of Georgia in my talk, which you will get some person to read and explain to you. I send you a particular message, which I delivered from the great king, relative to a new province on the Ohio; also a plan of said new province; by which you will see the king's justice and resolution to observe his engagements with you, and you will perceive, that he has given orders not to settle any lands between your line and said new province. I expect to hear fully from you, and that you will give me an account of all that may pass at your meeting with the other nations, and that nothing will be hid from me.

JOHN STUART.

(Endorsed.)

Abstract of a Treaty of Cession by the Creeks and Cherokee Indians, at Augusta, 1st June, 1773.

Abstract of a Treaty of Cession to His Majesty, of certain lands, for the payment of the debts due by the Creek and Cherokee Indians to their Traders, at a Congress of the Chiefs of both Nations, at Augusta, June 1st, 1773 :

The line to begin at the place where the lower Creek path intersects Oguchie river, and along the main branch of said river to the source of the southernmost branch of said river ; and from thence along the ridge, between the waters of Broad river and Oconico

river, up to the Buffalo Lick; and from thence in a straight line to the tree marked by the Cherokees near the head of a branch falling into the Oconico river; and from thence along the said ridge twenty miles above the line already run by the Cherokees; and from thence to the Savannah river, by a line parallel with that formerly marked by them and the Creeks, by Saliache and Taliache, and other head men of the lower Creeks; also, cede from the present boundary line at Phintroloway creek, on the Altamaha river; up the said river to an island opposite to the mouth of Barber creek; from thence across the Oguachia river opposite to the road about four miles above Buckhead, where a canoe ferry used to be kept.

JA. WRIGHT, [SEAL.]
JOHN STUART. [SEAL.]

("Endorsed.")

Talk to the Cherokees, Augusta, 3d June, 1773.

Friends and Brothers: The business which occasions this meeting, is now happily agreed upon by the warriors of both nations; and we are all acquainted with the description and extent of the lands which you have consented to cede to his majesty, by way of satisfaction for your debts to your traders.

I am now, by his majesty's orders, to communicate to you a matter in which you, as well as other Indian nations, may think yourselves materially concerned. You know that boundary lines dividing the lands ceded by you to his majesty in the different provinces, from those reserved by you for your hunting grounds, have at different times been agreed upon and marked by order of his majesty, that cavils and disputes about land might thereby be avoided. In the year 1771, you, the Chiefs of the Cherokee Nation, marked a line dividing your hunting grounds from what you gave up to his majesty in the province of Virginia, and which fell in upon the head or source of Louisa, and down the stream thereof to its confluence with the Ohio; and by an instrument of cession you relinquished all claims or pretensions to any lands to the northeastward of said line. Boundary lines were in like manner, and for the said reasons, agreed upon and marked in the northern department; and the river Ohio was agreed upon as a natural and permanent boundary, as far as the claims of the northern tribes extended, or were suffered to extend; that is, to the confluence of the Conhoway with said river; and all lands which had, until then, belonged to, or had been claimed by, the northern tribes, were, by the treaty of Fort Stanwix, ceded to his majesty, in consequence of which a great number of his majesty's white subjects settled upon those lands, and, that order and regularity might be introduced amongst such a number of people, preferred a petition

to his majesty, praying that said country might be erected into a government, and civil appointed to govern and administer justice amongst them; which prayer his majesty has been graciously pleased to grant.

The boundaries of the said new province are: beginning on the south side of the river Ohio, opposite the mouth of Sciota; thence southerly, through the pass in the Anasiota mountains, to the south side of the said mountains; thence along the south side of said mountains, northeastwardly to the fork of the great Kenhawa, made by the junction of Greenbriar river and the New river; thence along the Greenbriar river, on the easterly side of the same, unto the head or termination of its northeasterly branch thereof; thence easterly to the Alleghany mountains; thence along the said Alleghany mountains to Lord Fairfax's line; thence along the same to the spring head of the north branch of the river Potomack; thence along the western boundary line of the province of Maryland to the southern boundary line of the province of Pennsylvania; thence along the said southern boundary line of Pennsylvania to the end thereof; thence along the western boundary line of the said province of Pennsylvania, until the same shall strike the Ohio river; thence down the said river Ohio to the place of beginning.

I shall now show you the limits of said province as marked upon this map, which will convey to you a clearer idea of its situation and extent. I am further to acquaint you, that his Majesty has strictly ordered and directed, that no part of the land between the boundary line of said new province and that marked by you in 1771, extending to the Ohio, in consequence of the treaty of Lochaber, in 1770, shall be occupied by, or granted to, any of his majesty's subjects. This must convince you of his majesty's justice and resolution to adhere to his engagements with you, and to prevent, as far as possible, those intrusions upon your lands so often and so loudly complained of.

(Endorsed.)

No. 4.—*Talk from Lord Dunmore to the Little Carpenter and Chiefs of the Cherokee Nations of Indians.*

To the Little Carpenter and the Chiefs of the Cherokee Nations of Indians.

Brothers: When I lately received, through Col. Byrd, the talk addressed to me from the Little Carpenter, I was rejoiced at so

good a testimony of the pacific disposition and friendly sentiments of the Cherokees towards their brothers of Virginia; and I resolved, in return, to give every proof in my power of my regard for the Cherokees, by promoting harmony between them and their brothers of Virginia, and establishing an intercourse between their country and this, that might be of mutual advantage; but I fear that the Cherokees are taking a step which will defeat all my good intentions, and, if my advice be true, lay a foundation for still greater calamities than those we were so lately threatened with. I am informed that the Cherokeees have inconsiderately (not to say worse) listened to the dangerous proposals of a certain evil disposed and disorderly person, named Henderson, and, allured by a little present gain, have entered into a bargain for lands, which they either have sold or intend to sell to the said Henderson.

The Cherokees cannot be ignorant that the great king, our common father and sovereign, in order to secure the possessions of the Indians from the encroachments of our own unruly people, and to prevent their artifices from imposing upon and taking an advantage of the unwary Indians in underhand bargains, hath forbid any persons, but such as are duly authorised by himself, or one of his governors, to treat with Indians for lands; and the Cherokees must be aware that if they were allowed to dispose, in this irregular manner, of lands to white people, it would be impossible for the different governments in their neighborhood ever to know the exact boundaries of the Indian country, and therefore it would be impossible to prevent continual quarrels and murders; the unhappy examples of which, on that account, having already been but too frequent. But these private arrangements will have still more extensive consequences, and prove fatal to the Indian race in the end.

Titles to land thus obtained from Indians by our bad people, (for none others will ever take them in that manner,) will interfere with the grants of the king and his different governors, and be productive of endless confusion, disputes, and ruin among the white people themselves,—and the Indians will be considered the cause. The king, whose orders and regulations you thus neglect, will think you no longer worthy his fatherly love and care. The people in the governments about you will take every opportunity of revenging upon you the injuries which your irregularity brings upon them; and these very wicked men who betray you into the errors,—though now they are but few in number, they speak you fair and pretend integrity, by paying you perhaps a valuable consideration for land you choose to sell and think of no great consequence; yet these men, when they find themselves strong, which will soon be if you encourage such as them—for all the bad people from every part will flock to them—will take by force those lands you wish to preserve, and are most dear to you.

How can it be supposed that men who have disobeyed the laws and orders of their king and governments, to which they, their

relations, and friends all belong, will keep any agreement with you? You may assure yourselves, they will never rest satisfied till they have dispossessed you of all your country, and driven you out, or extirpated you. I hope the Little Carpenter and all my brethren, the Cherokees, will give attention to what I have here written, and consider me as their real friend when I advise them, if the bargain be not yet concluded, that they will make known to the said Henderson and his associates, as they did not understand the import of it, and it was contrary to the orders, regulations, and laws of the king and his governments, it cannot be valid. And I expect the Cherokees will oblige the said Henderson, and whatever persons are concerned with him, to quit the possessions of any lands which he or they may have taken under pretence of said bargain. This is the only way of preventing the evils I have above enumerated; and if my brothers, the Cherokees, comply with this fully, they may depend upon the protection and favour of the king, his governments, and all the good people belonging to them; but if they refuse or trifle with me, I shall be obliged, though with grief, to speak to them in another manner.

DUNMORE.

At Williamsburg, this 23d day of March, 1775.

(Endorsed.)

To the Chiefs of the Cherokee Nation—to Ocanastota, the Little Carpenter, Judge Friend, and the other Chiefs of the War-like Nations of the Cherokees:

I am commanded, by his Excellency, the right Hon. John, Earl of Dunmore, his Majesty's Lieutenant and Governor General of Virginia, to send you his letter by a special messenger, who is to read it to your council, and have it justly interpreted; and as it contains matter of the greatest importance to your nation, and make not the least doubt but you will pay due attention to it, especially as it is from so great a man, and one who stands in the place of the Great King over the water, our common father, I hope you will treat the messenger with kindness, and give him a safe convoy if he desires it to Watawgo.

The sale you have lately made of that great tract of land on the Ohio, without the advice or consent of the king, or any of his governors, has greatly alarmed the people in this and the neighbouring colonies; and there is no doubt but our king will be much offended with you, and withdraw that fatherly love and protection from you which he has hitherto granted, unless you immediately comply with the governor's request. This land you all know was the property of the northern Indians till they sold it to our king, and that it is but a few years since you pretended to claim it. In the year 1744, at Lancaster town, in Pennsylvania, the Six Nations

sold and made a deed for it, in presence of commissioners sent from Virginia, Maryland and the Governor of Pennsylvania, who paid them a great price for it; about twenty-three years ago the Ohio Indians, at a great treaty at Logs town, sold their claim to all the land on the south side of the Ohio, and confirmed the deed made at the treaty at Lancaster, for which the commissioners from Virginia paid them a large sum. About seven years ago, another treaty was held with the Six Nations at Fort Stanwix, in presence of Sir William Johnson, the Governor of Pennsylvania and New Jersey, and commissioners from Virginia, when all the former sales were confirmed, new deeds made for all the lands on the Ohio to the Cherokee river, and a very great sum paid for it; and it was then proved by witnesses, that the Cherokees had, at a treaty they formerly held with the northern Indians, acknowledged they had no lands there, off the waters, of their own right. All these transactions you no doubt been acquainted with, and therefore could not but know that you were selling land that has been the property of the king our father, for upwards of thirty years; and that your now setting up a claim to it, would give him and our great warrior, the governor, great offence. I hope you will fall upon some method of having this matter settled with your brothers, the white people, in an amicable manner, that it may not break that friendly intercourse that has for some time subsisted between us, and which I hope will always continue, as it is so much the benefit of both nations. I make no doubt but you will on reading and considering the governor's letter, send him an answer, in which you will fully declare your sentiments, and give him that satisfaction he so earnestly requests. The letter I shall carefully transmit to his lordship.

I received a letter from my brother the Little Carpenter, with a string of wampum, by which I promised myself the pleasure of shaking hands with him at my house, and of conducting him safe through the inhabitants of this country, but I since heard that Col. Henderson would not suffer him to come this way.

I am, brothers,
Your friend and brother,
WM. PRESTON.

Fincastle county, April the 12th, 1775.

(Endorsed.)

No. 19—*To Oconostotah, &c.*

Brother Oconostotah:

Colo. Nathaniel Gist, one of our general's warriors captains, will deliver you this talk—receive him kindly, and use him well. I expect that you and your warriors, and head men, will not fail to meet Colonel Christian, Colonel Preston and Colonel Shelby, at

the fort near the great Island, to confirm the peace. In order to show you and your nation, the friendship of the Virginians towards them, and of our desire to strengthen the chain of friendship with you, I assure you that the Cherokees shall be considered as entitled to the protection of Virginia. If any nation or people shall strike you or your people, let me know it, and the Virginia warriors shall march to your assistance, and help you to take vengeance on your enemies. If you or your people shall stand in need of provisions, powder, salt, or anything else, you shall be furnished with it; if your old men, women or children, shall be in danger in their towns, let them come into our country, and we will take them into our houses, and build forts for them, either in your country or in ours, to keep them from being hurt. Brothers, listen well.

I have now made you the offers of friendship, of all the people of Virginia. If you accept of it, we shall live happy and become one people with you; but if you listen to bad talks, our warriors will again carry the war into your country, and spare nothing you have, or any of your people—I shall be sorry for it, but I have offered you friendship first; don't refuse it, but let us be friends. Brother Ouconastotah, the council of head men who preside over the whole country of Virginia, have agreed to this letter, and advise me to send it to you; I have written it with my own hand, and hope you will give your answer to our commissioners at the fort. If the Dragging Canoe, or any one else of your people who are afraid, will come in and be friendly, our people have orders not to hurt them, but will receive them well, and make peace with them.

PATRICK HENRY, Jun'r.

March 3d, 1777.

(A copy.)

(Endorsed.)

No. 23.—*Articles of peace, July* 20, 1777, *between the Cherokees and Virginia. Articles of peace, Commonwealth of Virginia on the one part, the Cherokee nations, called the Overhill Indians, on the other.* 20*th July*, 1777.

Articles of a treaty of peace made and concluded at Fort Henry, near the great Island, on Holston's river, on the 20th July, 1777, between the commissioners from the Commonwealth of Virginia, in behalf of that State, of the one part, and the subscribing chiefs of that part of the Cherokee nation, called the Overhill Indians, in behalf of all their people, of the other part.

Article 1st. That hostilities shall forever cease between the said Cherokees and the people of Virginia from this time, and that peace, friendship, and mutual confidence shall take place. If either party

is attacked by any nation of Indians whatsoever, the other party is to give such assistance as may be required, as soon as men can be raised for that purpose, after the requisition is made, without pay or reward.

Article 2d. All white or negro prisoners belonging to any of the United States, amongst said Cherokees, if any there be, shall be given up immediately to the person who shall be appointed to reside at Chota, as an agent for the State of Virginia; to whom also, the said Cherokees are to deliver all horses, cattle, or other property belonging to the said people of Virginia, which they have taken since the beginning of the late war, that can possibly be discovered and procured.

Article 3d. That no white man shall be suffered to reside in, or pass through the Overhill farms without a proper certificate, signed by three magistrates in the county of Washington, in Virginia, or in the county of Watauga, in North Carolina, to be produced to, and approved by the agents at Chota. Any person failing or neglecting to comply herewith, is to be apprehended by the Cherokees and delivered to the said agent, who they are to assist in conducting to the commanding officer at Fort Henry; and the said Cherokees may apply to their own use all the effects such persons may be in possession of at the time they are taken in the nation. And should any runaway negroes get into the Overhill farms, the Cherokees are to secure them until the agent can give notice to the owner, who, on receiving them are to pay such a reward as the agent may judge reasonable.

Article 4th. That all white men residing in or passing through the overhill country, properly authorised or certified as aforesaid, are to be protected in their persons and property, and to be at liberty to remove in safety when they desire it. If any white man shall murder an Indian, he shall be delivered up to a magistrate in Washington county, to be tried and put to death according to the laws of the State. And if any Indian shall murder a white man, the said Indian shall be put to death by the Cherokees, in the presence of the agent at Chota, or two magistrates in the county of Washington.

Article 5th. That as many white people have settled on lands below the boundary between Virginia and the Cherokees, commonly called Donelson's line, which lands they have respectively claimed in the course of this treaty, and which makes it necessary to fix and extend a new boundary, and to make a just and equitable purchase of the lands contained therein, it is therefore agreed by and between the said commissioners in behalf of the Commonwealth of Virginia, of the one part, and the subscribing chiefs in behalf of the said Cherokees, on the other part, in free and open treaty without restraint, fear, reserve or compulsion of either party, that a boundary line between the people of Virginia and the Cherokees be established, and the lands within the same be sold and made

over to the said commonwealth; which line is to begin at the lower corner of Donelson's line on the north side of the river Holston, and to run thence down that river according to the meanders thereof, and binding thereon, including the great island to the mouth of Claud's creek, being the second creek below the warrior's ford at the mouth of Carter's valley; thence running a straight line to a high point on Cumberland mountain, between three and five miles below or westward of the great gap which leads to the settlement of the Kentucky. This last mentioned line is to be considered as the boundary between Virginia and the Cherokees. And all the lands between the said line and that run by Col. Donelson, and between the said river and Cumberland mountain, as low as the new boundary, is to be the present purchase.

For which tract of land, or so much thereof as may be within the limits of Virginia when the boundary between the States of Virginia and North Carolina is extended, the said commissioners agree, in behalf of the Commonwealth, to give to the said Cherokees two hundred cows and one hundred sheep, to be delivered at the great island when the said line shall be run from the river to Cumberland mountain, to which the said Cherokees promised to send deputies and twenty young men, on due notice of the time being given them.

And for and in consideration of the said stocks of cattle and sheep, the said chiefs do, for themselves and their nation, sell, make over and convey to the said Commonwealth, all the lands contained within the above described boundary, and do hereby forever quit and relinquish all right, title, claim or interest in and to the said lands or any part thereof; and they agree, that the same may be held, enjoyed and occupied by the purchasers, and, that they have a just right, and are fully able to sell and convey the said lands in as full, clear and ample a manner as any lands can possibly be, or ever have been sold, made over or conveyed by any Indians whatever.

Article 6th. And to prevent as far as possible any cause or pretence, on either side, to break and infringe on the peace so happily established between Virginia and the Cherokees, it is agreed by the commissioners aforesaid and Indian Chiefs, that no white man on any pretence whatsoever shall build, plant, improve, settle, hunt or drive any stock below the said boundary, on pain of being drove off by the Indians, and his property of every kind being taken from him. But all persons who are or may hereafter settle above the said line, are quietly and peaceably to reside thereon without being molested, disturbed or hindered, by any Cherokee Indian or Indians; and should the stocks of those who settle near above the line, range over the same into the Indian land, they are not to be claimed by any Indians, nor the owner, or any persons for him, be prevented from hunting them, provided such person do not carry a gun; otherwise the gun aad stock are both forfeited to the Indians, or any

other person who on due proof can make it appear. Nor is any Indian to hunt or to carry a gun within the said purchase, without license first obtained from two justices; nor to travel from any of the towns over the hills, to any part within the said boundary, without a pass from the agent. This article shall be in full force until a proper law is made to prevent encroachment on the Indian lands, and no longer.

Article 7th. That all the goods of every kind given by the Commonwealth of Virginia to the said Cherokees, are to be delivered by one of the commissioners, who, with a party of men, shall escort them some distance out of the settlement.

Memorandum.—Before signing, that the Tassell in council yesterday objected against giving up the Great island opposite to Fort Henry, to any person or country whatsoever, except Col. Nathaniel Gist, for whom it was reserved by the Cherokees. The Raven did the same this day in behalf of the Indians, and desired that Col. Gist might sit down upon it when he pleased, as it belonged to them and him to good talks upon. This reserve was made before signing. Read, interpreted, signed and ratified, in the island opposite to the fort, by the parties present.

WILLIAM CHRISTIAN, [L. S.]
WM. PRESTON, [L. S.]
EVAN SHELBY. [L. S.]

Witness,
DANIEL. SMITH, [L. S.]
ISAAC SHELBY, [L. S.]
JAS. THOMPSON, [L. S.]
JACOB WOMACK, [L. S.]
JOHN MONTGOMERY, [L. S.]
ISAAC BLEDSOE, [L. S.]
WM. SHARP. [L. S.]

ANUCHAH, of Tuskugo, his ⋊ mark. [L. S.]
INNIKIHCIJAH, or the girl of Tuskuge, his ⋊ mark. [L. S.]
TELLEHAH, or the chestnut of Telleko, his ⋊ mark. [L. S.]
TOOSLOOK, mouth of the river, his ⋊ mark. [L. S.]
ROLANNA, or the Raven from the mouth of Tellicko, his ⋊ mark. [L. S.]
OWOYAH, or the Pidgeon, Natchez creek, his ⋊ mark. [L. S.]
SHATUKAH, of Settik, his ⋊ mark. [L. S.]
SUNNEWAH, from the Island, his ⋊ mark. [L. S.]
RALLAGULA, or the Pot Clay, CHILHONY, his ⋊ mark. [L. S.]
TUCKASAY, of the Rabit town, his ⋊ mark. [L. S.]
OTTASAH, or the Northward Warrior, mouth of the river, his ⋊ mark. [L. S.]
OCCUNASTOTAH, (of Chota,) his ⋊ mark. [L. S.]
ATTAKULLA, BULLA, TUCKUGE and Natchez creek, his ⋊ mark. [L. S.]

Kuy-el-et, or the Old Tassel, of Togue,	his ⋈ mark.	[L. S.]
Sarunukeh, or the bearer of Chota,	his ⋈ mark.	[L. S.]
Willanawee, (of Togue,)	his ⋈ mark.	[L. S.]
Quulookah, of Highwassey,	his ⋈ mark.	[L. S.]
Otossatch, of Highwassey,	his ⋈ mark.	[L. S.]
Ookoonekah, or the White Owl from Natchez creek,	his ⋈ mark.	[L. S.]
Oosku, or Abrum, of Chillowey,	his ⋈ mark.	[L. S.]

(Endorsed.)

No. 20. *Williamsburgh, Nov. 15th,* 1777.

Brother Oucconastotah:

I write you this letter by my War Captain, Martin. He is to go to Chotes with my brothers, the Cherokees, that came here with Col. Gist. Three of your people that staid at Williamsburgh and did not cross the water with Col. Gist, were uneasy to go home and would not stay, but set off by themselves. For fear any wicked persons might hurt them, I directed Captain James Thompson to go along with them and take care of them. The Pigeon is dead, as your people tell me, of sickness; I am very sorry for him, because he was a good man. My heart and the hearts of all the Virginians are still good towards you and your people; we will always keep the peace we made with you. Goods are very scarce with us yet; I have directed Captain Martin to get some from Charles Town, to sell to your people. I am in hopes to get some this winter, and whenever I do, I shall think of you and your nation. Use Captain Martin well, he is a good man, and tell him any thing you want me to hear; and mind no talk from any white man but him, as he is a beloved man and speaks truth.

I am your brother,
P. HENRY.

(Endorsed.)

No. 21.—Patrick Henry to the Cherokees.

Brother Oucconostotah:

I am glad to hear by my War Captain, Martin, that you are well. I am in good health, and still keep by me the hope of peace, that you and your warriors smoked with me at Williamsburgh, when we had the good talk together, which I shall always remember; I hope you and your people will always remember them, and live with me and my people in peace, and like brothers ought to do.

Captain Martin will carry out some goods to trade with your people for their skins; they are not many, but as I promised you to spare a part of what I got, I send them to be sold among you, and to show you I don't forget what I promised. I send you a match coat and a few other things as a present to you, my brother, as a token of my love. Your friend Captain Martin has told me that the line which was run, was not convenient for you, and that you want it to come higher up the river Holston; I have agreed to it, because I don't want to distress you in any thing, and have given orders to have it altered a few miles, to take in the fording place into your land. Captain Martin, who is a good man, and a friend to your people, also tells me Colonel Gist wants to take away the island at Holston from you. I have desired him to write to me, what you and your people say about it, as there was some misunderstanding about it, for Colonel Gist says you gave him the ground to do what he would with it. Tell me if you did give it to him or not, and justice shall be done to both parties. Captain Martin also mentioned to me, to exchange the sheep you were to have for powder and salt; I will do it and send it up as soon as I can.

I depend upon your using Captain Martin well, and that you suffer no harm to be done to him, for he is a good man and a good friend to you and your nation. Whenever you want to say any thing to me, tell it to him, and he is honest and will tell it to me truly. I hope to get more goods soon, for we have almost conquered our enemies; when I get more, you and your people shall have part. Let the Virginians and Cherokees always be brothers.

I am your friend and brother,

P. HENRY.

STATE OF KENTUCKY, *Jefferson Circuit, sct:*

JOHN THRUSTON'S Exe'r, *Compl't.*
against
GEORGE R. CLARK'S heirs, *Def'ts.*
} In Chancery.

Pleas in chancery held before the Honourable John P. Oldham, sole Judge of the Jefferson Circuit Court, at the Court-house in Louisville, on the twenty-second day of November, one thousand eight hundred and twenty-four.

Bill filed.

Be it remembered, that heretofore, that is to say, on the sixteenth day of May, one thousand eight hundred and twenty-one, Edmund H. Taylor, executor of John Thruston, deceased, by Charles M. Thruston, Esq., his counsel, filed in the clerk's office of the Jefferson Circuit Court, the following bill in chancery, and exhibit, to wit:

Bill.

"To the honourable judge of the Jefferson circuit, sitting in chancery, humbly complaining unto your honour, sheweth:

"Your orator, Edmund H. Taylor, only acting executor of the last will and testament of John Thruston, deceased, that on or about the day of in the year 1801, George Rogers Clark, otherwise called G. R. Clark, being indebted to your orator's testator, in the sum of five hundred and thirty-four pounds three shillings and five pence, to secure the payment thereof, executed to said John Thruston his deed of mortgage, herewith filed and marked (A,) made part hereof, to *the* secure the payment of the said sum of money in said mortgage mentioned.

"Your orator further states, that the said Clark wholly failed, according to the terms and conditions of said mortgage, to pay the sum of money and interest due thereon, at the time specified in said mortgage, or at any time thereafter.

"Your orator further states, that previous to the day of 1804, the period at which the said sum of money mentioned in said deed of mortgage was to have been paid, the said John Thruston departed this life, to wit, about day of 1802, having first made his last will and testament, in and by which he appointed his wife, Elizabeth, ex'x, and Buckner Thruston, Alexander Scott Bullitt, Thomas January and himself, ex'rs thereof; that of the aforesaid ex'rs and executrix, your orator has alone taken upon himself the burthen and execution of the will, a copy of which will, and of his letters testamentary, your orator files herewith as a part of this bill.

"Your orator further states, that most of the lands mentioned and conveyed by said mortgage, *laid* at that time in part of the country to which the Indian title was not extinguished; that such title has been but lately extinguished, and that a part of the mortgaged premises which had not been surveyed, your is informed and believes, the heirs of said G. R. Clark, who has since departed this life, are now surveying, and intend carrying the same into grant; and he really apprehends that they feel a disposition to dispose of said lands, or hamper them in such a way as to prevent a recovery herein.

"Your orator further states, that the mortgage was never recorded by said John Thruston, in his lifetime. And he is convinced and charges the fact to be, that said John Thruston omitted to have the same recorded, owing the strict intimacy and friendship between him and said Clark, and from the most perfect confidence that each had in the integrity of the other; that for many years previous to the death of said George R. Clark, which happened about the day of 18 , the said Clark had been visited with apoplexy, which for many years rendered him incapable of

attending to any species of business, and which materially impaired his powers of utterance and the strength of his mental faculties.

"Your orator that said G. R. Clark died without having made a will, unmarried, and that his estate, real and personal, descended to William Clark, of the State of Missouri, Richard C. Anderson, Jr., Cecelia Anderson, Eliza Anderson, now the wife of Isaac Gwathmey, and Ann Logan, now the wife of a certain John Logan; to Owen Gwathmey and Ann, his wife, to Dennis Fitzhugh and Frances, his wife, to John H. Clark, Isaac Clark, Geo. W. Clark, William Clark, James A. Pearce and Nancy, his wife, Benjamin Temple and Eleanor E., his wife, William Croghan, Sen., and Lucy, his wife, all of whom are of full age and reside in this circuit, and all of whom your orator prays may be made def'ts to this bill.

"Your orator further states, that the said William Croghan and the said W. Clark, of Missouri, and the said Dennis Fitzhugh, have for many years had full knowledge of the justness of the claim, and of the existence of the mortgage aforesaid. He further states, that the mutilated condition of the mortgage aforesaid, has, as he has been informed and believes, proceeded from its having been touched with nitric acid. He further states, as an additional reason why the mortgage aforesaid has not long since been acted upon, was that since the execution of said mortgage up to his death, said Clark laboured under great pecuniary embarrassments. And your orator felt, under these circumstances, no disposition to press the foreclosure of said mortgage.

"But now, so it is, may it your honor, the said defendants combining and confederating with divers other persons unknown to your orator, are using every effort and means to avoid the payment of the mortgage debt, and to protect the estate of said G. R. Clark from the payment of the same. In tender, &c., and for as much, &c., your orator prays the Commonwealth's writ of subpœna, directed, &c., commanding, &c., that said def'ts, heirs of said Clark, be decreed to pay to your orator the mortgage debt aforesaid, with interest by such time and in such manner as this honorable court shall direct; and that in default thereof, the def'ts equity of redemption of, in and unto the mortgaged premises, be forever barred and foreclosed; that the property mortgaged as aforesaid, be subjected and held for the payment thereof; and that should said mortgaged property be found, upon a sale thereof, inadequate to pay the same, that then said def'ts make up the deficiency out of other estate descended to them from said G. R. Clark, which estate so descended, your orator charges, consists of real estate in this Commonwealth to the value of one hundred thousand dollars; and may it please your honor to grant to orator, all such relief in the premises as to equity belongs and the nature of his case authorises, and he will ever pray, &c.

ED. H. TAYLOR, *Ex'r.*
THRUSTON, *P. C.*

"Received the mortgage marked A, filed herewith, 17 January, 1824.

THRUSTON, *P. C.*

On the filing of which bill the following subpœnas in chancery were issued, to wit:

"The Commonwealth of Kentucky to the Sheriff of Jefferson County, greeting:

We command you that you summon William Clark, William Croghan, sen'r, and Lucy, his wife, Owen Gwathmey, and Ann, his wife, Dennis Fitzhugh, and Francis, his wife, Richard C. Anderson, Jr., John Logan, and Ann, his wife, Isaac R. Gwathmey, and Eliza, his wife, Cecelia Anderson, John H. Clark, Isaac Clark, George W. Clark, Benjamin Temple, and Eleanor, his wife, and James A. Pearce, and Ann, his wife, to appear before the judge of our Circuit Court for the Jefferson circuit, at the court house in Louisville, on the 30th day of our present April term, to answer a bill in chancery, exhibited against them by Edmund H. Taylor, the only qualified and acting executor of the last will and testament of John Thruston, dec'd; and this they shall in no wise omit, under the penalty of one hundred pounds each; and have then there this writ.

Witness Worden Pope, clerk of our said court, at the court house aforesaid, the 16th day of May, 1821, and in the 29th year of the commonwealth.

WORDEN POPE.

Sheriff's Return.

"Came to hand 18th of May, 1821, and executed on the within named Owen Gwathmey, Dennis Fitzhugh and wife, Richard C. Anderson, Jr., and John H. Clark, and not time to execute on the balance.

JOHN TALBOTT, *D. S.*,
For JNO. JONES, *S. J. C.*

"At a Circuit Court held for the Jefferson circuit, at the court house in Louisville, on the 16th day of May, 1821, came the complainant, by his counsel, and it appearing, to the satisfaction of the court, that the defendant, William Clark, is not an inhabitant of this commonwealth, on the motion of the complainant, it is ordered, that unless the said defendant, William Clark, doth appear here on or before the first day of the next July term of said court, and enter his appearance herein, and answer the complainant's bill, the same will be taken as confessed against him, and the matters and things therein contained be decreed accordingly.

And it is further ordered, that a copy of this order be inserted in some public authorised newspaper of this State, for eight weeks successively, by weekly insertions. And the complainant, by leave of the court, filed an amended bill herein, which is certified, to wit:

Amended Bill filed.—Amended Bill.

"Edmund H. Taylor, only acting executor of John Thruston, dec'd, in amendment to his original bill filed in this court against G. R. Clark's heirs, would state, that he does not know whether the said George Rogers Clark had, at the time of the execution of the mortgage in the bill mentioned, or at his death, any title to the land in the said mortgage mentioned. And your orator prays, that the said defendants may, on oath, be compelled to exhibit and file with their answers herein, all, and every evidence of title which the said George R. Clark had, or which they, or any of them, to the lands in the said mortgage mentioned.

"Your orator further states, that the said George R. Clark, at his death, was seised, and had the legal and equitable title to two tracts of about thirty-six thousand acres of land, each lying and being below the mouth of the Tennessee river, on the Ohio river, and which two tracts adjoin each other.

"Your orator prays, that the defendants may be compelled to exhibit with their answers herein, copies of the patents, or such evidence as they may have or possess in relation to the right and title of said G. R. Clark to said two last tracts of land.

"And your orator prays, that if the lands conveyed in mortgage aforesaid, should prove insufficient for the purpose of satisfying the mortgage debt, that then and in that case, the said two tracts of 36,000 acres each, or so much thereof as may be adjudged, may be subjected for the purpose of satisfying the mortgage debt aforesaid, or any balance that may be, after the mortgaged lands may have been subjected.

"Your prays process against the defendants as named in his original bill, that they answer on oath the matters hereof, in addition to his original bill. And he prays your honor to grant to him all such relief as his case requires, and he will pray, &c.

EDMUND H. TAYLOR, *Ex'r of*, &c.

On the 26th day of May, 1821, the following subpœna and alias subpœna in chancery were issued, to wit:

The Commonwealth of Kentucky to the Sheriff of Shelby County, greeting:

"We command you to summon John Logan and Ann, his wife, Isaac R. Gwathmey and Elizabeth, his wife, to appear before the

Judge of our Circuit Court, for the Jefferson circuit, at the court house in Louisville, on the first day of our next July term, to answer a bill in chancery, and an amendment thereto, exhibited against them and others by Edmund H. Taylor, the only qualified and acting executor of the last will and testament of John Thruston, deceased; and this they shall in no wise omit, under the penalty of one hundred pounds. And have then there this writ.

Witness Worden Pope, clerk of our said court, at the court house aforesaid, the 26 day of May, 1821, and in the 29th year of the commonwealth.

WORDEN POPE.

Sheriff's Return.

"Came to hand the 20 June, 1821, executed the 28 June, 1821, on the within named defendants.

GEORGE ROBINSON, *D. S.*,
For ZAS. CARPENTER, *S. S. C.*

"The Commonwealth of Kentucky to the Sheriff of Jefferson County, greeting:

"We again command you to summon William Croghan, sen'r, and Lucy, his wife, Owen Gwathmey, and Ann, his wife, Dennis Fitzhugh, and Frances, his wife, Richard C. Anderson, Jr., John Logan, and Ann, his wife, Isaac R. Gwathmey, and Eliza, his wife, Cecelia Anderson, John H. Clark, Isaac Clark, George W. Clark, Benjamin Temple, and Eleanor, his wife, and James A. Pearce, and Ann, his wife, to appear before the Judge of our Circuit Court, for our Jefferson circuit, at the court house in Louisville, on the first day of our next July term, to answer a bill in chancery, and an amendment thereto, in our said court exhibited against them by Edmund H. Taylor, the only qualified and acting executor of the last will and testament of John Thruston, deceased; and this they shall in no wise omit, under the penalty of one hundred pounds each. And have then there this writ.

Witness Worden Pope, clerk of our said court, at the court house aforesaid, the 26 day of May, 1821, and in the 29th year of the commonwealth.

WORDEN POPE.

Sheriff's Return.

"Came to hand 1st June, 1821, and executed on the balance of the within named defendants, except William Croghan and his wife.

JNO. TALBOTT, *D. S.*,
For JNO. JONES, *S. J. C.*

"At a Circuit Court held for the Jefferson circuit, at the court house in Louisville, on the 17th day of July, 1821, came the defendant, Richard C. Anderson, Jr., and swore and filed his answer in this cause. The defendant, William Clark, by the said Anderson, filed his answer in this cause.

R. C. Anderson's Answer.

The answer of R. C. Anderson, Jr., to a bill exhibited against him, &c., in the Jefferson Circuit Court, by Edmund H. Taylor, executor of John Thruston, dec'd. This respondent answering, says, that he knows nothing of the execution of the mortgage or debt mentioned in the bill; he knows nothing of the land mortgaged, and did not know before the filing of this bill that George Rogers Clark ever owned such land, except that he had heard that he owned an entry of 1500 acres on the south side of Tennessee, but where it was, or what has become of it, he never knew. He does not know or believe that G. R. Clark died seised of two tracts of 36,000 acres each, or of any other land. He does not admit or believe, that any lands or other property descended to him from the said G. R. Clark. He has no evidence of the title of any of the lands mentioned, in his possession, nor ever had.

R. C. ANDERSON, Jr.

"Sworn to in open court by Richard C. Anderson, Jr., this 17 July, 1821.

Test: ISAAC H. TYLER, *D. Cl'k.*

Wm. Clark's Answer.

"The answer of William Clark, one of the defendants to the original and amended bill of complaint of Edmund H. Taylor, only acting executor of the last will and testament of John Thruston, dec'd, complainant. This defendant, now and at all times hereafter, saving and reserving all and all manner of benefit and advantage of exception to the manifold errors, uncertainties, imperfections and *uncertainties* in the said complainants' said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as he, this defendant, is advised is material for him, this defendant, to make answer unto, he, this defendant, answering, saith, that he knows nothing of the execution of the mortgage deed set out in the complainants' bill of complaint, and marked (Exhibit A,) nor whether the same was bona fide for a good and valuable consideration, as expressed in said mutilated exhibit; nor how, why, nor what manner the same has become mutilated and defaced; nor why the same has not long since been enforced and foreclosed, and the mortgaged premises sold in satisfaction of the debt so alleged to be remaining due and unpaid. That true it is your respondent, for some years past, has known of

the existence of the said mutilated mortgage; but whether the claim was originally just, as is pretended, or was not satisfied and discharged, your respondent is unable to state.

"This respondent further answering, saith, that the complainant is mistaken in alleging that most of the lands mentioned and conveyed by said mortgage laid at that time in a part of the country to which the Indian title was not extinguished, for now the truth is, only the last mentioned tract or entry was so situated, and the other three tracts were within the acknowledged and known civil limits of the State of Kentucky, and might have been sold upon the due proof, enrollment and prosecution of the mortgage in the proper court, and would, as this respondent humbly conceives, at all times, whilst the title to the same remained in the mortgagor and subject to the said mortgage, (if, indeed, they were ever bound by and subject to said mortgage,) have sold for more than would have satisfied said mortgage debt, and the same (which, as your respondent has been informed, and believes it to be true,) are now in the possession of innocent persons, who purchased, or have become possessed thereof, without the knowledge of any such mortgage or incumbrance as is complained of in the said complainant's bill of complaint, provided they are now subject and sold for the payment of the said mortgage debt, will bring more than enough to satisfy and discharge the same.

"This respondent further answering, saith, that he has taken, or received by inheritance from his deceased brother, G. R. Clark, no lands or real estate whatever, known to this respondent. This respondent is well persuaded, and doth verily believe, that the complainant is also mistaken in alleging in his said bill of complaint, that the said respondent's brother, G. R. Clark, died seised of two tracts of land, of about thirty-six thousand acres each, lying and being below the mouth of the Tennessee river on the Ohio river. That two tracts of land of about that quantity, and to which your respondent presumes the complainant intended to make reference, were sold and conveyed to this respondent by the said G. R. Clark, in his lifetime, and long before his death, by deed, bearing date on or about the day of which is of record in the office of the Court of Appeals in the State of Kentucky, and the original whereof is now on file in the court, and to which this respondent begs leave to refer the complainant for more particular information.

"This respondent utterly denies all and all manner of fraud and combination, &c., and prays to be dismissed hence with his reasonable costs, &c., and as, in duty bound, your respondent will ever, &c.

WM. CLARK.

STATE OF MISSOURI, COUNTY OF ST. LOUIS, *ss.*

"Be it remembered, that on the day of the date hereof, person-

ally appeared before me, a Justice of the Peace for the county aforesaid, William Clark, who, being duly sworn, on his oath saith, that the matters in the foregoing answer stated as of his own knowledge, are true, and those stated as proceed from the information of others, he verily believes the same to be true.

WM. CLARK.

"Sworn to and subscribed, this 26 day of June, A. D. 1821, before me,

J. C. GERAUD, *J. P.*"

At a Circuit Court, held for the Jefferson circuit, on the 20 day of July, 1821, at the court house in Louisville, came the defendant, Dennis Fitzhugh, by Richard C. Anderson, Jr., his counsel, and filed his answer in this cause, which answer is in the following words and figures, to wit:

"The answer of Dennis Fitzhugh to a bill exhibited against *them* and others, in the Jefferson Circuit Court, by E. H. Taylor, executor of John Thruston, dec'd.

"These respondents answering, says, that they know nothing of the mortgage or debt mentioned in said bill, except, that in the year they saw the mutilated paper filed as (Exhibit A.); but it was after the death of Gen'l Geo. R. Clark, who departed this life some time in the year 1818. These respondents knows nothing about the lands mentioned in said (Exhibit A.) These respondents does not admit that Gen'l Clark died seised or possessed of two tracts of land of about 36,000 acres each. They do not admit, or believe, that any lands or other property descended to them from the said Gen'l Geo. R. Clarke, and prays to be hence dismissed with their costs, &c., &c.

D. FITZHUGH.

Sworn to in open court by Dennis Fitzhugh, this 13 July, 1821.

Test: ISAAC H. TYLER, *D. C.*

"At a Circuit Court continued and held as aforesaid, on the 28 day of July, 1821, ordered, that this cause be continued until the next term.

At which time, to wit, a Circuit Court held as aforesaid on the 27th day of November, 1821, came the complainant, by his counsel, and filed an amended bill in this cause by leave of the court, which amended bill is in the words and figures following, to wit:

Edmund H. Taylor, only acting executor of the last will and testament of John Thruston, in addition and amendment to his original bill filed in this honorable court against the heirs of George

Rogers Clark, would further represent and allege that the said George R. Clark died seised and possessed of divers and sundry large and valuable tracts and lots of land in what's called Clark's grant, in the State of Indiana; but to what precise extent, or of what exact value, your orator is unable to state. But he charges that he so died possessed, and was owner in fee of at least 10,000 of value of $50,000; all of which he charges is, and was, well known to all the defendants.

He further charges, that since the death of the said George R. Clark, the said defendant, William Clark, the brother of the said George, has sold and disposed of sundry tracts and lots of land descended as aforesaid, to wit, to the amount of $2000, and received the money therefor; and that, previous to the death of said George, he had disposed of lands, the property of said George R. Clark, and received the amount of $1000; all of which was, and is, well known to all the defendants in this suit.

Your orator expressly calls upon the said George R. Clark's heirs, and particularly upon the said defendants, William Clark, William Croghan, sen'r., and Dennis Fitzhugh, to file with their answers herein to this amended bill, all the vouchers and evidences that they have in their possession, of any right, title or claim to lands, lots, or personal estate, of which said George R. Clark died seised in law or in equity, lying in Indiana aforesaid, this State or elsewhere, and to shew and state their kind, quantity and value distinctly, precisely and clearly; and also to shew and state, with their answers herein, what sales have been made by the said William Clark, Wm. Croghan, sen'r., Dennis Fitzhugh, or any of them, and the facts and circumstances in relation thereto.

Your orator further charges and states, that the pretended conveyance made by the said George R. Clarke (if any such exist) to the said William Clark, was made for the purpose of rendering the estate of said George R. Clark inaccessible to his creditors, and more particularly with the view of hoping thereby to defeat the fulfilment of an executory contract entered into by the said George R. Clark with a certain Humphrey Marshall, for the sale of the lands alluded to in your orators' original bills. And that such conveyance (if any exist) was made upon the trust and confidence and understanding that the lands, &c., so conveyed, should descend to and be equally divided amongst all the brothers and sisters of said George R. Clark and their descendants, all of which was and is well known to the said defendants.

Your orator further charges and states, that the existence of the mortgage in the bill mentioned, has always been known to the said William Clark since the moment of its execution, or shortly thereafter. That the said William Clark, about the time of the execution of said mortgage, and long previous thereto, as also the said George R. Clark, was a frequent visitor at the house of, and intimate acquaintance of the said John Thruston and his family,

as was also the said William Croghan, to whom your orator imputes the same knowledge of said mortgage.

"Your orator would further state, that if the said George R. Clark did not die seised and possessed of the land in this and the original bills mentioned, that such lands were conveyed to the said William Clark for the purposes aforesaid, and expressly upon the trust and confidence aforesaid; and that such conveyance was without any consideration. All of which facts are, and have been, well known to the defendants.

"Your orator prays that said defendants may be compelled, on oath, to answer the several matters and things in this bill contained, on their respective corporal oaths, as particularly specifically as if the same were herein again repeated, by way of interrogatory; and your orator prays all such relief in the premises, as to equity, and his case authorizes, and he will pray, &c.

EDM'D H. TAYLOR,
Exor. of Jno. Thruston.
CHS. M. THRUSTON,
Pro. Complt.

At a circuit court held for the Jefferson Circuit, at the court-house in Louisville, on the 1st day of December, 1821, ordered that this cause be continued until the next term.

At which time, to wit, a circuit court held as aforesaid, on the 24 day of January, 1822, came the defendant, Dennis Fitzhugh, and filed his answer to the complainant's amended bill in this cause, which answer is in the words and figures following, to wit:

"The answer of Dennis Fitzhugh to an amended bill filed in the Jefferson Circuit Court, by Edm'd H. Taylor, ex'or. of John Thruston, against him and others. This resp'dt. for answer, says, that he does not know or believe that George R. Clark died seised of any lands in Clark's grant, in the State of Indiana; if he did, the fact has never come to his knowledge. He knows nothing of the allegation, charging that William Clark sold land before and since the death of the said George R. Clark, belonging to said estate; he has never heard of the facts, and does not believe it; he says that he has never made sale of any land, or other property, of the said G. R. Clark, either real or personal; he states his belief that the conveyance made to William Clark, was not without consideration, but was for money actually advanced for the use of the said George R. Clark; he states that he has no vouchers or evidences in his possession, showing that G. R. Clark died seised or possessed of any property; he thinks and believes that the allegations and insinuations in the said amended bill contained, are *false*, and *known* to be so by the complainant, if he really knows any thing about it. Having answered all that part of the bill which he can be required to answer, h eprays to be dismissed with his costs.

D. FITZHUGH."

"JEFFERSON COUNTY, *sct.*

"This day Dennis Fitzhugh personally appeared before me, and made oath that the statements within made, of his own knowledge, are true; and those from the information of others, he believes to be true.

Given under my hand, this 1st Jan'y., 1822.

J. FERGUSON, *J. P. J. C.*"

At a circuit court held for the Jefferson Circuit, at the court-house in Louisville, on the 12th day of February, 1822, ordered that this suit be continued until the next term.

At which time, to wit, a circuit court held for the Jefferson circuit, at the court-house aforesaid, on the 3d day of April, 1822, came the complainant, by his counsel, and filed his bill of revivor in this cause against Benjamin Temple and Eleanor E. Temple, his wife, James A. Pearce and Nancy, his wife, Isaac Clark, William Clark, and George W. Clark, heirs at law of John H. Clark, dec'd, who has departed this life intestate. Whereupon, on motion of the complt., by his counsel, it is ordered that the clerk of this court issue process accordingly, on the said bill of revivor, returnable to the first day of the next term of this court.

Bill of Rev'r.

"Edmund H. Taylor, acting executor of the last will and testament of John Thruston, deceased, in amendment and revivor of his bill in chancery, filed in this honorable court against the heirs of George R. Clark, dec'd, would state that since the filing of his original bill in this case, John H. Clark, one of the heirs of s'd George R. Clark, has departed this life intestate, without issue and unmarried. That Isaac Clark, William Clark, George Clark, Benjamin Temple and Eleanor E., his wife, and James A. Pearce and Nancy, his wife, are the heirs of the said George R. Clark, and that administration of the estate of the said John H. Clark has been committed by the county court of Jefferson county, to the s'd Isaac, upon the goods, chattles, and credits of the said John H. Clark. He makes the before named heirs of the said John H. Clark, and s'd adm'r, defts. to this bill, and prays process against them; that this suit be revived against them, that they answer, &c.; and he prays, as in and by his original bill he has already prayed.

THRUSTON, *P. C.*"

At a circuit court held for the Jefferson circuit, at the court-house aforesaid, on the 6 day of April, 1822, ordered that this cause be continued until the next term.

At which time, to wit, a circuit court, held as aforesaid, on the 4 day of June, in the same year, came the defendant, William Clark, and filed his answer to the complainant's amended bill.

"The separate answer of William Clark, and of the defendants to the second amended bill of Edmund H. Taylor, only acting executor of the last will and testament of John Thruston, dec'd, complainant. The defendant, saving and reserving to himself, now and at all times hereafter, all manner of exceptions to the said complainant's second amended bill, answereth and saith, he humbly conceives it would be sufficient for him at present, merely to refer to his (this respondent's) answer, on file in this cause, given to the many untruths and idle and impertinent allegations contained and charged in the original and first amended bill, and which are now here repeated in the second amended bill of the said complainant; nevertheless, this respondent states that he knows nothing of the sundry large and valuable tracts and lots of land situated in what is called the Illinois grant, in the State of Indiana, of which George R. Clark died seised and possessed, unless the complainant intends to refer to three or four tracts of land of five hundred acres each, situated in the Illinois grant, mortgaged by the said George R. Clark to Michael Lacassagne or John Hocker, and to which the equity of redemption, he is informed, still exists.

"This respondent, since the death of the said George Rogers Clark, has sold and disposed of no tract or tracts or lots of land of which his deceased brother, George R. Clark, died seised and possessed; nor has he received two thousand dollars, or any other sum of money, for lands so descended. Some time about the year 1800, this defendant sold a small tract of George R. Clark's land, situate on Sulphur Lick, adjoining the 428 acres mentioned in the complainant's pretended mortgage, but he is not certain of receiving any money in payment; if he did receive money in payment, it was under three hundred dollars. This is the only land sold, and the only sum of money received for lands sold by this respondent, for the said George R. Clark, to the best of his knowledge and belief. But were it otherwise, and the bill of the complainant accidentally true in this particular, your respondent is at a loss to know by what right he is required to give an account of transactions during the lifetime of the said George Rogers Clark, that transpired even before the pretended mortgage was in existence, and which are not charged, or pretended to have been designed to injure or defraud the complainant, or to evade the payment of the pretended debt, not sought to be established against the estate of the said George Rogers Clark.

"This respondent has no vouchers or evidence of any right, title, or claim to lands or lots in his possession, of which the said George Rogers Clark died seised, in law or equity, in the State of Indiana, or elsewhere. The only vouchers or evidences of personal estate, or debts due to the said George Rogers Clark, which were found

amongst his papers, and of which nothing has ever been made, or is expected to be made by your respondent, will appear by reference to the schedule of old bonds and notes, &c., hereto annexed, marked A, and intended as a part of this, your respondent's answer. This respondent *denies* that he ever received a conveyance of lands from George Rogers Clark, for the purpose of rendering them inaccessible to his (George R. Clark's) creditors, or with a view or intention of defeating the fulfilment of any executory contract entered into by the said George R. Clark, with Humphrey Marshall, or with any other person. He also *denies* that any understanding existed between the *the* said George Rogers Clark and this defendant, that any lands conveyed by the former to the latter should descend to and be equally divided amongst all the brothers and sisters and their descendants. This respondent repeats, that he knew nothing of the execution of the pretended mortgage when it was executed, nor has he any recollection of having ever heard of its existence, until within a few years past.

"In 1802 this defendant moved from Kentucky to Indiana, and in 1803 left home on an expedition to the pacific ocean, and did not return to Kentucky until the year 1806. Previous to his leaving Kentucky this defendant was intimately acquainted with Col. John Thruston and family, and was in the habit of visiting them frequently, as is stated in the complainant's bill, but has no recollection of ever having been informed of the existence of the mortgage in question. After the statements already made, in this, your respondent's answer, it can hardly be necessary to repeat (yet for a more full and perfect answer this deft. doth expressly charge) that the allegations of the complainant, *reiterated by his solicitor*, that certain lands alluded to in the original and amended bills of complaint, were conveyed to this defendant, upon trust, confidence and understanding, that the lands so conveyed should descend and be equally divided amongst all the brothers and sisters of the said George Rogers Clark, and their descendants, was without any consideration, are absolutely false. It is known to the complainant, and to many other persons residing in his neighborhood, that your respondent laid himself liable for, and had to pay, and did pay and discharge sundry large debts and sums of money contracted by *for* the said George Rogers Clark; and that your respondent was compelled to sacrifice his plantation and valuable property in Louisville, to enable him to pay and discharge said debts, in consideration of which the lands below the Tennessee river on the Ohio river, referred to in the complainant's bill, *was* conveyed to your respondent, and were deemed at that time to have been well paid for by all those acquainted with their situation and the circumstances under which they were taken. And this defendant denies all manner of fraud, wherewith he stands charged, in and by the said second amended bill of complaint; without that, that there is any other matter or thing material or necessary for this defendant

to make answer unto, and not herein and hereby well and sufficiently answered unto, confessed or avoided, traversed, or denied, is true.

WM. CLARK."

"STATE OF MISSOURI, *County of St. Louis.*

Circuit Court, February Term, 1822.

I, Archibald Gamble, clerk of the Circuit Court, for the County of St. Louis, do certify that William Clark personally appeared in open court, and made oath that the facts contained in the foregoing answer, and stated of his own knowledge, are true; and those facts stated upon information of others, he believes to be true.

Given under my hand and seal of office, at St. Louis,
[L. S.] March 7th, 1822.

ARCHIBALD GAMBLE, *Clk.*"

"MISSOURI, *County of St. Louis, sct.*

I, Nathaniel Beverly Tucker, Judge of the third judicial circuit, in the State of Missouri, comprehending the county of St. Louis, do hereby certify, that the within certificate of Archibald Gamble, clerk of the circuit court of the said county, is in due and common form.

Given under my hand and seal, March 7th, 1822.

N. B. TUCKER. [L. S.]

A.

"A schedule of old bonds and notes found amongst the papers of George Rogers Clark, after his death.

C. M. Thruston,	note	dated	28th	March,	1780, for	£1,594 09
T. Bentley,	do.	do.	19th	Feb.,	1780,	300 00
T. Bentley,	do.	do.	1st	June,	1781,	1,860 00
John Sanders,	do.	do.	25th	Feb.,	1782,	7 10
Pat. Joyes,	do.	do.	15th	Oct.,	1789,	125 00
James Patten,	do.	do.	19th	March,	1790,	16 04
Mich'l Dillon,	do.	do.	15th	April,	1796,	2 9 2

Ben. Pope ass'd note, dated 26th Oct. 1782, for 19 bushels of salt.

"At a circuit court held for the Jefferson Circuit, as aforesaid, on the 29th day of June, 1822, ordered that this cause be continued until the next term.

At which time, to wit, a circuit court held as aforesaid, on the 15th day of July, in the same year, ordered that this cause be continued until the next term.

At which time, to wit, a circuit held as aforesaid, on the 26th day of September, in the same year, ordered that this cause be continued until the next term.

At which time, to wit, a circuit court held as aforesaid, on the 20th day of January, 1823, came the complainant by his counsel, and filed a bill of revivor in this cause against John Gwathmey, Samuel Gwathmey, George C. Gwathmey, Isaac R. Gwathmey, Catharine Woolfolk, wife of George Woolfolk, Betsy Anderson, wife of Richard C. Anderson, jr., Diana M. Bullitt, wife of Thomas Bullitt, Temple Gwathmey, Lucy Priest, wife of Peter Priest, William Boothe, only son of Nancy Boothe, who was Nancy Gwathmey, and Frances Jones, heirs of Owen Gwathmey, dec'd; and on his motion it is ordered that this said suit be revived and prosecuted against them, and that process on said bill of revivor, returnable to the thirtieth day of the next March term of this court; and William H. Boothe is appointed guardian to defend for the said William Boothe, and that process issue accordingly.

And it appearing to the satisfaction of the court, that the defendant, Samuel Gwathmey, is not an inhabitant of this commonwealth, on the motion of the complainant by his counsel, it is ordered, that unless the said defendant, Samuel Gwathmey, doth appear here on or before the forty-sixth day of the next March term of this court and enter his appearance herein, and answer the complainants' original and amended bills, the same will be taken as confessed against him, and the matters and things therein contained, be decreed accordingly. And it is further ordered, that a copy of this order be inserted in some public authorised newspaper of this commonwealth, for eight weeks successively, by weekly insertions.

"Edmond H. Taylor, on amendment to his bill filed in this court against the heirs of George R. Clark, would state, that Mrs. Gwathmey, wife of Owen Gwathmey, and a sister and heir of s'd G. R. Clark, has departed this life, since the last term of this court, and that her heirs are John Gwathmey, Samuel Gwathmey, George C. Gwathmey, Isaac R. Gwathmey, Catharine Woolfolk, wife of George Woolfolk, Betsy Anderson, wife of Richard C. Anderson, jr., Diana M. Bullitt, wife of Thomas Bullitt, Temple Gwathmey, Lucy Priest, wife of Peter Priest, William Boothe, only son of Nancy Boothe, who was Nancy Gwathmey, and Frances Jones. He prays that this suit be revived against them, and that said William Boothe, who is an infant, defend this suit by his father, Wm. H. Boothe. He prays, as in and by his former bills he has prayed.

THRUSTON, *P. C.*

On the 20th day of January, 1823, the following subpœnas in chancery were issued, to wit:

The Commonwealth of Kentucky, to the sheriff of Jefferson County, greeting:

We command you to summon John Gwathmey, Samuel Gwath-

mey, George C. Gwathmey, Richard C. Anderson, jr. and Betsy, his wife, Thomas Bullitt, and Diana M. Bullitt, his wife, Temple Gwathmey, Peter Priest, and Lucy, his wife, Frances Jones, and William Boothe, and Wm. H. Boothe, his guardian ad litem; to appear before the Judge of our Circuit Court for the Jefferson Circuit, at the court-house in Louisville, on the thirtieth day of our present January term, to answer an original bill in chancery, in our said court, exhibited against Owen Gwathmey, and Ann, his wife, and William Clark and others, and a bill of revivor, filed against them and others, in the same case, by Edmund H. Taylor, executor of John Thruston, dec'd; and this they shall in no wise omit, under the penalty of one hundred pounds: and have then there this writ.

Witness, Worden Pope, clerk of our said court, at the court-house aforesaid, the 20th day of January, 1823, and in the 31st year of the commonwealth.

WORDEN POPE.

Note.—That William H. Boothe has been appointed by the Jefferson Circuit Court, to defend this suit, for his infant son, William Boothe, deft., who is an infant, and is to be notified accordingly by the sheriff, *accordingly*.

Test: WORDEN POPE, *Clk.*

Came to hand the 21st of January, 1823; executed on G. C. Gwathmey, Peter Priest and wife, and Frances Jones, the 22d of January, 1823; executed on Thos. Bullitt and Diana his wife, the the 23d January, 1823; executed on William H. Boothe, the 24th of January, 1823; on Temple Gwathmey, the 29th January, 1823; on Richard C. Anderson, jr. and Besty, his wife, the 4th of February, 1823. John Gwathmey, and Samuel Gwathmey, not found.

T. BUCKNER, S. B. C.

The Commonwealth of Kentucky, to the Sheriff of Shelby County, greeting:

We command you to summon Isaac R. Gwathmey, and George Woolfolk, and Catharine, his wife, late Catharine Gwathmey, the said Isaac and Catharine being two of the children and heirs of Ann Gwathmey, dec'd, to appear before the Judge of our circuit court for the Jefferson circuit, at the court-house in Louisville, on the thirtieth day of our present January term, to answer an original bill, exhibited against William Clark, Owen Gwathmey, and Ann, his wife, and others; and a bill of revivor filed against them and others, by Edmund H. Taylor, executor of John Thruston, deceased; and this they shall in no wise omit, under the penalty of one hundred pounds each, and have then there this writ.

Witness, Worden Pope, clerk of our said court, at the court-

house aforesaid, the 20th day of January, 1823, and in the 31st year of the Commonwealth.

WORDEN POPE.

Came to hand the 4th day of March, 1823, which was too late to execute.

GEORGE ROBINSON, *D. S.*
For P. W. TAYLOR, *S. S. C.*

At a circuit court held for the Jefferson circuit, at the court-house in Louisville, on the first day of February, 1823, came the complainant by his counsel, and on proof being made to the court by the oath of Charles M. Thruston, that Humphrey Marshall is a material witness for the complainant in this cause, and that the said Humphrey Marshall is aged and infirm, leave is given said complainant to take the deposition of the said Marshall to be used on the trial of this cause; provided the complt. shall have legal notice of the time when, and place where the same shall be taken; and this cause is continued until the next term.

On the 15th and 16th days of March, 1823, the following subpœnas in chancery were issued, to wit:

The Commonwealth of Kentucky, to the Sheriff of Jefferson County, greeting:

We command you to summon John Gwathmey, to appear before the Judge of our circuit court, for the Jefferson circuit, at the court-house in Louisville, on the 30th day of our present March term, to answer a bill in chancery, in our said court, exhibited against him and others, in the Jefferson Circuit Court, by Edmund H. Taylor, executor of the last will and testament of John Thruston, dec'd; and this he shall in no wise omit, under the penalty of one hundred pounds; and have then there this writ.

Witness, Worden Pope, clerk of our said court, at the court-house aforesaid, the 15th day of March, 1823, and in the 31st year of the Commonwealth.

WORDEN POPE.

April 25th, 1823, service proved in court by the oath of Milton Wilson.

The Commonwealth of Kentucky, to the Sheriff of Logan County, greeting:

We command you to summon Benjamin Temple, and Eleanor E. Temple, his wife, to appear before the Judge of our circuit court, for the Jefferson circuit, at the court-house in Louisville, on the 33d day of our present March term, to answer a bill in chancery, in our said court, exhibited against them and others, by Ed-

mund H. Taylor, executor of the last will and testament of John Thruston, dec'd; and this they shall in no wise omit, under the penalty of one hundred pounds each; and have then there this writ.

Witness, Worden Pope, clerk of our said court, at the court-house aforesaid, the 15th day of March, 1823, and in the 31st year of the Commonwealth.

WORDEN POPE.

I acknowledge service of the within subpœna, this 25th of March, 1823.

BENJA. TEMPLE.

Witness,
JOHN BUSH.

Executed on Eleanor E. Temple, on 26 March, 1823, by delivering to her a copy of the within, and reading this and explaining the same to her.

J. L. WATKINS, *D. S.*
For D. W. POOR, *S. L. C.*

The Commonwealth of Kentucky, to the Sheriff of Shelby County, greeting:

We command you to summon John Logan, and Ann, his wife, and Isaac R. Gwathmey, and Elizabeth, his wife, to appear before the Judge of our circuit court, for the Jefferson circuit, at the court-house in Louisville, on the 30th day of our present March term, to answer a bill in chancery, in our said court exhibited against them and others, by Edmund H. Taylor, executor of the last will and testament of John Thruston, deceased; and this they shall in no wise omit, under the penalty of one hundred pounds each, and have then there this writ.

Witness, Worden Pope, clerk of our said court, at the court-house aforesaid, the 16th day of March, 1823, and in the 31st year of the Commonwealth.

WORDEN POPE.

Came to hand 20th March, 1823, and executed the 21st day of March, 1823.

GEO. ROBINSON, *D. S.*
For P. W. TAYLOR, *S. S. C.*

The Commonwealth of Kentucky, to the Sheriff of Shelby County, greeting:

We command you to summon Isaac R. Gwathmey, and George Woolfolk, and Catharine, his wife, to appear before the Judge of

our circuit court, for the Jefferson circuit, at the court-house in Louisville, on the 30th day of our present March term, to answer a bill in chancery, and a bill of revivor in our said court, exhibited against them and others in said court, by Edmund H. Taylor, executor of the last will and testament of John Thruston, dec'd; and this they shall in no wise omit, under the penalty of one hundred pounds each; and have then there this writ.

Witness, Worden Pope, clerk of our said court, at the court-house aforesaid, the 16th day of March, 1823, and in the 31st year of the Commonwealth.

WORDEN POPE.

Came to hand the 20th March, 1823, and executed the 21st day of March, 1823, on the within named George Woolfolk, and Isaac R. Gwathmey; and the within named Catharine Woolfolk is not found.

GEO. ROBINSON, *D. S.*
For P. W. TAYLOR, *S. S. C.*

On the 29th day of March, 1823, the following subpœnas in chancery were issued, to wit:

The Commonwealth of Kentucky, to the Sheriff of Fayette County, greeting:

We command you to summon George W. Clark to appear before the judge of our Circuit Court, for the Jefferson circuit, at the court house in Louisville, on the 48th of our present March term, to answer a bill in chancery, in our said court, exhibited against him and others, by Edmund H. Taylor, executor of John Thruston, dec'd; and also a bill of revivor filed against him and others, in the same case, by said Edmund H. Taylor, executor as aforesaid; and this he shall in no wise omit, under the penalty of one hundred pounds; and have then there this writ.

Witness, Worden Pope, clerk of our said court, at the court house aforesaid, the 29th day of March, 1823, and in the 31st year of the commonwealth.

WORDEN POPE.

Executed April the 5th, 1823.

J. C. RICHARDSON, Jr., *S. F. C.*

The Commonwealth of Kentucky, to the Sheriff of Jefferson County, greeting:

"We command you to summon Catharine Woolfolk, wife of George Woolfolk, to appear before the Judge of our Circuit Court for the Jefferson Circuit, at the court-house in Louisville, on the 48th day of our present March term, to answer a bill in chancery

in our said court, exhibited against her and others by Edmund H. Taylor, executor of John Thruston, dec'd; and also a bill of revivor, filed against her and others, in the same case, by said Edmund H. Taylor, executor as aforesaid; and this she shall in no wise omit, under the penalty of one hundred pounds; and have then there this writ.

"Witness, Worden Pope, Clerk of our said Court, at the court-house aforesaid, the 29th day of March, 1823, and in the 31st year of the Commonwealth.

WORDEN POPE.

"Came to hand, March 29th, 1823, and executed the same day on the within named Catharine Woolfolk.

WM. BUCKNER, *D. S.*
For T. BUCKNER, *S. J. C.*

"The Commonwealth of Kentucky, to the Sheriff of Jefferson County, greeting:

"We command you to summon Lucy Croghan, wife of William Croghan, deceased, to appear before the Judge of our Circuit Court for the Jefferson circuit, at the court-house in Louisville, on the 48th day of our present March term, to answer a bill, and amended bills in chancery, in our said court, exhibited against her and others, by Edmund H. Taylor, executor of the last will and testament of John Thruston, deceased; and this she shall in no wise omit, under the penalty of one hundred pounds; and have then there this writ.

"Witness, Worden Pope, Clerk of our said Court, at the court-house aforesaid, the 29th day of March, 1823, and in the 31st year of the Commonwealth.

WORDEN POPE.

"Came to hand the 10th day of April, 1823, and executed on the within named Lucy Croghan the same day.

WILLIAM BUCKNER, *D. S.*
For T. BUCKNER, *S. J. C.*

"The Commonwealth of Kentucky, to the Sheriff of Jefferson County, greeting:

"We command you to summon Isaac Clark, Wm. Clark, George Clark, James A. Pearce, and Nancy, his wife, and said Isaac Clark, as administrator of John H. Clark, deceased, to appear before the Judge of our Circuit Court for the Jefferson circuit, at the court-house in Louisville, on the 48th day of our present March term, to answer a bill in chancery in our said court, exhibited against them and others by Edmund H. Taylor, executor of John Thruston, dec'd; and a bill of revivor, filed against them and others in the same case, by said Edmund H. Taylor, executor as aforesaid; and this they shall in no wise omit, under the penalty of one hundred pounds; and have then there this writ.

"Witness, Worden Pope, Clerk of our said Court, at the court-house aforesaid, the 29th day of March, 1823, and in the 31st year of the Commonwealth.

WORDEN POPE.

"Executed on all but George Clark.

WM. BUCKNER, *D. S.*
For T. BUCKNER, *S. J. C.*

"I acknowledge the service of the within, for myself and wife, March 31, 1823. JAS. A. PEARCE.

"I acknowledge the service of a copy of this subp'a, March 31, 1823. W. CLARK.

"This day, March 31, I hand William Clark a copy of the within. JOHN POPE, Jr.

"A true copy of the within delivered to J. A. Pearce, March 31, 1823." B. HILL, *C. J. C.*

At a Circuit Court, held for the Jefferson circuit, at the court-house in Louisville, on the 1st day of April, 1823, came the complainant by his counsel, and made proof to the court by the oath of John Bush, that the process that issued in this case was served on the defendant, Benjamin Temple, on the 25th day of March, 1823.

And at a Circuit Court, held as aforesaid, on the second day of April in the same year, came the defendants, Isaac R. Gwathmey, and Elizabeth, his wife, by their counsel, and filed their joint answer to the complainants' bill, and amended bills in this cause—which answer is as follows, to wit:

"The answer of Isaac R. Gwathmey, and Elizabeth his wife, to the bill and amendments exhibited against them, &c., in the Jefferson Circuit Court, by John Thruston's executor.

"These respondents, saving and reserving to themselves all benefit of all manner of exception to the errors, uncertainties, and untrues in said original and amended bills contained, for answer thereto, or so much thereof as they are advised is material for them to answer, say they know nothing of the mortgage or debt mentioned in said bill. They have no knowledge of any property of which the said George R. Clark died seized or possessed. They know nothing of the lands mentioned in said mortgage, and do not know or admit that any lands or property descended to them from the said George. They have no evidence of any title in their possession of any of the lands in said bills mentioned.

"They deny all fraud, &c., and pray to be hence dismissed, with their costs, &c.

ISAAC R. GWATHMEY,
ELIZABETH GWATHMEY.

"Isaac R. Gwathmey, and Elizabeth C. Anderson, late Elizabeth

C. Gwathmey, in answer to the original and amended bills filed against them, &c., by John Thruston's ex'r, say, they know nothing more than what is contained and set forth in the answer of Isaac R. Gwathmey, and Elizabeth, his wife, which they refer to as part of their answer. They admit they are the heirs of the late Ann, wife of Owen Gwathmey. They deny all fraud, and pray to be hence dismissed with their costs, &c."

ISAAC R. GWATHMEY,
ELIZABETH C. ANDERSON.

And on the same day came the defendants, George Woolfolk, and Catharine his wife, by their counsel, and filed their joint answer to the complainants' bill in this cause, which answer is as follows, to wit:

"The joint answer of George Woolfolk, and Catharine, his wife, to a bill exhibited against them and others, in the Jefferson Circuit Court, by E. H. Taylor, ex'r of Jno. Thruston. These respondents state, that they have no knowledge of the statements set forth in compl'ts bills. They never heard of the execution of the exhibit (A) until within the last twelve months. They know of no estate, either personal or real, that descended to them from G. R. Clark, nor do they claim any. They refer to the answers of Wm. Clark, filed herein, and pray that the same may be taken as a part of this their answer. These respondents knowing but little of the transaction, require of compl't full proof of all the matters and obligations in his bills."

G. WOOLFOLK,
C. T. WOOLFOLK.

On the 4th day of April, 1823, the following subpœna in chancery was issued, to wit:

"The Commonwealth of Kentucky to the Sheriff of Jefferson County, greeting:

"We again command you to summon Samuel Gwathmey to appear before the Judge of our Circuit Court, for the Jefferson circuit, on the 35th day of our present March term, at the court-house in Louisville, to answer a bill in chancery, and a bill of revivor, exhibited against him and others in our said court, by Edmund H. Taylor, executor of the last will and testament of John Thruston, deceased; and have then there this writ.

"Witness, Worden Pope, Clerk of our said Court, at the court-house in Louisville, the 4th day of April, 1823, and in the 31st year of the Commonwealth.

WORDEN POPE.

"Came to hand April the 4th, 1823, and executed on same day on the within named Samuel Gwathmey."

WM. BUCKNER, *D. S.*
For T. BUCKNER, *S. J. C.*

At a Circuit Court held for the Jefferson circuit, at the court-house in Louisville, on the 25th day of April, 1823, came the compl't, by his counsel, and made proof of the service of the process in this case, by the oath of Milton Wilson, on the def't, John Gwathmey, on the 25th day of March, 1823, by delivering him a true copy thereof; which process is dated the 15th day of March, 1823, and returnable to the 30th day of the present term of this court.

At a Circuit Court held as aforesaid, on the 3d day of May, 1823, came the defendant, Lucy Croghan, by her counsel, and filed her answer to the complainant's original and amended bills, which answer is as follows, to wit:

"The answer of Lucy Croghan to the original and amended bills in chancery, filed in the Jefferson Circuit Court against her and others, by Edmund H. Taylor, executor of John Thruston, dec'd.

"Your respondent, answering thereto, says she *says* nothing of the mortgage or debt mentioned in said bill. She does not admit or believe that George R. Clark died seised or possessed of two tracts of land of 36,000 acres each, below the Tennessee river. She positively denies that any land or other property descended to her by the death of G. R. Clark. This respondent has no knowledge of any of the other allegations of said bill; and having fully answered, prays to be dismissed, &c. &c. LUCY CROGHAN.

"JEFFERSON COUNTY, *sct.*

"Personally appeared before the undersigned, a Justice of the Peace for the county afs'd, Mrs. Lucy Croghan, and made oath that the statements made in the foregoing answer are true, to the best of her knowledge and belief.

"Given under my hand, this 2d day of May, 1823."

W. TOMPKINS, *J. P. J. C.*

And on the same day came the defendants, James A. Pearce, and Ann, his wife, and filed their joint answer to the complainant's bill herein—which answer is in the following words and figures, to wit:

"The answer of James A. Pearce, and Ann Pearce, his wife, late Ann Clark, to a bill in chancery, and amendments thereto, exhibited against himself and others in the Jefferson Circuit Court, in the State of Kentucky, by the executor of John Thruston, deceased.

"This respondent, saving and reserving to himself all benefit

and manner of exception to the many erroneous statements in said original and amended bills mentioned, for answer thereto, or so much thereof as he is advised is material for him to answer, says—he knows nothing of the debt or mortgage mentioned in said bills, or any circumstances attending the same; that he does not, at this time, know of any real or personal property of which George Rogers Clark died possessed; that he does not now, nor never has claimed title to any lands or other property descended to him from the said George Rogers Clark, to his knowledge; that this respondent has been informed, and verily believes, that a part of the lands mentioned in said bills, was conveyed by George Rogers Clark to William Clark—and if for any other purpose other than the consideration mentioned in said conveyance, this respondent does not know it; that should this respondent obtain title to any of the lands mentioned in said bill, he knows of no other source from which it could be derived, than by conveyance from William Clark, for a valuable consideration made to him. He denies all fraud, combination, collusion, &c., and prays to be dismissed, &c.

JAMES A. PEARCE.

"JEFFERSON COUNTY, *to wit:*

"This day James A Pearce made oath before the undersigned, a Justice of said county, that the statements in the foregoing answer are true, to the best of his knowledge and belief.

"Given under my hand, this 3d day of May, 1823."

I. FERGUSON, *J. P. J. C.*

And on the same day came the defendant, Samuel Gwathmey, into court, in his proper person, and filed his answer to the complainant's bill herein, which answer is as follows, to wit:

"The separate answer of Samuel Gwathmey to a bill in chancery, and amendments thereto, exhibited against himself and others in the Jefferson Circuit Court, in the State of Kentucky, by the executors of John Thruston, deceased.

"This respondent, saving and reserving to himself all benefit and manner of exception to the many erroneous statements in said original and amended bills mentioned, for answer thereto, or so much thereof as he is advised is material for him to answer, says, he knows nothing of the debt or mortgage mentioned in said bills, or any circumstances attending the same. That he does not at this time know of any real or personal property of which George Rogers Clarke died possessed. That he does not now nor never has claimed title to any lands or other property descended to him from the said George Rogers Clarke, to his knowledge. That this respondent has been informed and verily believes, that part of the

lands mentioned in said bills, was conveyed by George Rogers Clark to William Clark, and if for any other purpose other than the consideration mentioned in said conveyance, this respondent does not know it. That should this respondent obtain title to any of the lands mentioned in said bill, he knows of no other source from which it could be derived, than by conveyance from William Clark for a valuable consideration made to him. He denies all fraud, combination, collusion, &c., and prays to be dismissed, &c.

SAML. GWATHMEY."

JEFFERSON COUNTY, *to wit:*

"This day Samuel Gwathmey made oath before the undersigned, a justice of said county, that the statements in the above answer are true, to the best of his knowledge and belief.

Given under my hand this 3d day of May, 1823.

I. FERGUSON, *J. P. J. C.*

And on the same day came the defendant, George C. Gwathmey, into court in his proper person, and filed his answer to the complainant's bill herein, which answer is as follows, to wit:

"The answer of George C. Gwathmey to a bill and amendment exhibited against him, &c., in the Jefferson circuit court, by John Thruston's ex'r.

"This respondent, saving and reserving to himself all benefit and manner of exceptions to the many uncertainties and misrepresentations in said original and amended bills made and contained, for answer thereto, or to so much thereof as he is advised is material for him to answer, says: he knows nothing of the mortgage or debt mentioned in said bill; he has no knowledge of any property, of which the said George R. Clark died seised or possessed; he knows nothing of the lands mentioned in said mortgage, and does not know or admit, that any lands or other property descended to him from said George. He has no evidence of any title in his possession of any of the lands in said bills mentioned. He denies all fraud, and prays to be dismissed, &c.

GEO. GWATHMEY."

"JEFFERSON COUNTY, *sct.*

"Personally appeared before me George C. Gwathmey, and made oath that the statements made in the foregoing answer are true, to the best of his knowledge and belief.

Witness my hand, this 2d May, 1823.

W. TOMPKINS, *J. P. J. C.*"

And on the same day came the defendant, William Boothe, by William H. Boothe, his guardian ad litem, and filed his answer in

this cause, which answer is in the words and figures following, to wit:

"The answer of William H. Boothe, natural guardian for his son William, to a bill and amendments exhibited against them, *and* in the Jefferson circuit court, by John Thruston's ex'r.

"These respondents saving and reserving to themselves all benefit and manner of exception to the many uncertainties and misrepresentations in said original and amended bills made and contained, for answer thereto, or to so much thereof as he is advised is material for him to answer, says: he knows nothing of the mortgage or debt mentioned in said *debts*. He has no knowledge of any property, of which the said George R. Clark died seised or possessed. He knows nothing of the lands mentioned in said mortgage, and *do* not know or admit, that any lands or other property descended to his son from said Clark; he has no evidence of any title in his possession of any of the lands in said bills mentioned; he denies all fraud and prays to be dismissed, &c.

WM. H. BOOTHE,
as natural for his son,
WILLIAM H. BOOTHE"

"JEFFERSON COUNTY, *sct.*

"This day Wm. H. Boothe made oath before me, that the statements made by him in the foregoing answer are true, to the best of his knowledge, information and belief.

Witness my hand, this 3d day of May, 1823.

F. COSBY, *J. P. J. C.*"

And on the same day came the defendants, Thomas Bullitt and Diana, his wife, and filed their answer in this case, which was sworn to by the said Thomas Bullitt, which answer is as follows, to wit:

"The joint answer of Thomas Bullitt and Diana M., his wife, to a bill exhibited against them and others, in the Jefferson circuit court, by Edmund Taylor, executor of John Thruston, deceased.

"This respondent answering, says, that he knows nothing of the execution of the mortgage or debt mentioned in the bill. He knows nothing of the lands mortgaged, and did not know, before the filing of this bill, that George Rogers Clark ever owned such lands. He does not know or believe, that George Rogers Clark died seised of the tracts of lands of 36,000 acres each, or of any other lands. He does not admit or believe, that any lands or other property descended to him from the said George R. Clark.

THOMAS BULLITT."

And at a circuit court held, as aforesaid, on the sixth day of June, in the same year, ordered, that this cause be continued until the next term.

And at a circuit court held, as aforesaid, on the twelfth day of June, in the same year, came the defendant, Cecelia Anderson, by her counsel, and filed her answer herein, which answer is as follows, to wit:

"The answer of Cecelia Anderson to the original and amended bills in chancery, filed in the Jefferson circuit court against her and others, by Edmund H. Taylor, exec'r of John Thruston, dec'd.

"Your respondent answering thereto, says: she knows nothing of the mortgage or debt mentioned in said bills. She does not admit or believe, that George R. Clark died seised or possessed of two tracts of land of 36,000 acres each, below Tennessee river. She positively denies, that any land or other property descended to her by the death of Geo. R. Clark. This respondent has no knowledge of any of the other allegations in said bills; and having fully answered, prays to be dismissed, &c.

CECELIA ANDERSON."

JEFFERSON COUNTY, *sct.*

"This day the above named Cecelia Anderson appeared personally before the undersigned, a justice of the peace in and for said county, and made oath, that the above answer of facts, as stated by *himself*, are true and that those received from the information of others, she believes to be true.

Given under my hand this 6th day of June, 1823.

MINOR WHITE, *J. P. J. C.*"

At a circuit court held, as aforesaid, on the sixteenth day of October, in the same year, came the defendant, William Clark, jr., by his counsel, and filed his answer to the complainant's original and amended bills in this cause, which answer is in the following words and figures, to wit:

"The answer of William Clark to a bill in chancery and amendments thereto, exhibited against himself and others, in the Jefferson circuit court, in the State of Kentucky, by the ex'r of John Thruston, deceased.

"This respondent, saving and reserving to himself all benefit and manner of exceptions to the many erroneous statements in the said original and amended bills mentioned, in answer thereto, or so much as he is advised is material for him to answer, says: he knows nothing of the debt or mortgage mentioned in said bills, or any circumstance attending the same. That he

does not at this time know of any real or personal estate, of which George Rogers Clark died possessed. That he does not now, nor ever has claimed, any title to any lands or other property, descended to him from the said George Rogers Clark, to his knowledge. This respondent has been informed and verily believes, that a part of the lands mentioned in said bills was conveyed by George Rogers Clark to William Clark, and if for any other purpose, other than the consideration mentioned in said conveyance, this respondent does not know it. That should this respondent obtain title to any of the lands mentioned in said bill, he knows of no other source, from which it could be derived, than by conveyance from William Clark for a valuable consideration made to him. He denies all fraud, combination, &c., and prays to be dismissed, &c.

WILLIAM CLARK."

"LOGAN COUNTY, *sct.*

"This day William Clark, jr., made oath before me, Thomas S. Slaughter, a justice of the peace for said county, that the matters and things contained in the above answer, so far as is stated of his own knowledge, are true; and so far as is related from the information of others, he believes to be true.

Given under my hand, this 19th September, 1823.

THOS. S. SLAUGHTER,
J. P. J. C."

At a circuit court held, as aforesaid, on the twelfth day of November, in the same year, came the complainant, by his counsel, and with the leave of the court, filed a bill of revivor in this cause against Wm. H. Boothe, heir and legal representative of Wm. Boothe, an infant, defendant to this suit, who has departed this life. And on the motion of the complainant, process is awarded him on the said bill against the said William H. Boothe, as heir, as aforesaid, returnable on the 40th day of the present term of this court, which bill is as follows, viz't:

"Edmund H. Taylor, sole acting executor of John Thruston, deceased, would state, that William Boothe, one of the infant heirs and defendants in a suit in this court, instituted by him in this court against William Clark, &c., has departed this life under 21 years of age, and without issue. That his father, William H. Boothe, is his heir and legal representative. He prays, that this suit may be revived against him, as such heir, and he prays process against him accordingly. And he prays, as in and by his former bill he has already prayed.

E. H. TAYLOR,
Executor."

At a circuit court held, as aforesaid, on the 17th day of November, in the same year, came the complainant, by his counsel, and

on his motion, it is ordered, that the process to be issued on his bill of revivor against William H. Boothe, be made returnable to the 42d day, instead of the 40th day of the present term of this court; which subpœna issued accordingly, to wit:

"The Commonwealth of Kentucky, to the Sheriff of Jefferson County, greeting:

"We command you to summon William H. Boothe, to appear before the judge of our circuit court for the Jefferson circuit, at the court house in Louisville, on the 42d day of our present October term, to answer a bill of revivor in chancery, in our said court exhibited against him, by Edmund H. Taylor, executor of the last will and testament of John Thruston, deceased; and this he shall in no wise omit, under the penalty of one hundred pounds; and have then there this writ.

"Witness Worden Pope, clerk of our said court, at the court-house aforesaid, the 17th day of November, 1823, and in the 32d year of the Commonwealth.

WORDEN POPE."

"Came to hand the 18th November, 1823, and executed on the within named Wm. Boothe, the same day.

WM. BUCKNER, *D. S.*
For T. BUCKNER, *S. J. C.*"

And at a circuit court held, as aforesaid, on the 28th day of November, 1823, came the complainant, by his counsel, and by and with the leave of the court filed an amended bill in this cause, which was sworn to by Charles M. Thruston, Esquire, which is as follows:

"The amendment of *Edward* H. Taylor, exec'r of John Thruston, deceased, to a bill in chancery exhibited by him against the heirs of George R. Clark, deceased, in the Jefferson circuit court.

"The complainant further states, that the two tracts of land in bill mentioned, of thirty-six thousand acres each, were conveyed by said George, in his lifetime, to said William Clark, his brother, upon some trust or confidence between them, or to bring Humphrey Marshall to terms in relation to a contract between him and said George for said land, or to obtain a vacation thereof. And at or about the time said conveyance was made, the said William Clark declared to Worden Pope, one of the witnesses thereto, that such was the object thereof.

"And if there were any valuable consideration for such conveyance, which this complt. neither admits or believes, he charges and insists, that said conveyance was only to stand as a security therefor; and that a bona fide sale of said lands, by said George to said

William, was not contemplated or designed by either of them, and accordingly, since the death of said George R. Clark, the contract with said Marshall being vacated, the said William made, or at least sketched upon paper, a division of said two tracts of land, among the heirs of said George R. Clark, and has either conveyed or agreed to convey the same to them in consideration of, or in compliance with the trust aforesaid. And if upon any other or further consideration, which the compl't does not admit, he charges and insists, that such consideration is the payment or allowance to said William, by said heirs, to or for the amount claimed by said William, to be secured to him from said George, by said deed, and which amount he charges and insists, falls very far short of the value of said lands, and that the same are more than sufficient to pay said William such claim, and discharge this compl'ts mortgage.

"This complainant further states, that the said George R. Clark conveyed to the said William Clark sundry tracts of land, in the now State of Indiana, upon a trust or confidence between them, that the same should be for the use or benefit of the said George; and he charges, that the lands so conveyed were then and are still of value exceeding the present demand of complainant; and that during his lifetime, the said George conveyed to the said William, other lands in said State, to prevent or defeat a sale thereof under a judgment against said George, in the name of one Bazadon; that such was the sole, or at least one of the objects thereof; and this compl't charges, that the lands so conveyed were then, and are still worth more than the present demand, or of any demand which the said William ever had against said George. This complainant states, that of the lands so conveyed, to said William, by said George, in Indiana, as above mentioned, the said William, on or about the day of in the year sold one tract on the Ohio, to Fetter and Hughes, for the sum of one thousand dollars, and that Fetter and Hughes have paid therefor; and on or about the day of July, in the year 1818, sold to William C. Galt, one other tract, for four thousand five hundred dollars, and received payment thereof; and at other times, and to other persons, sold other tracts, and received payment to the amount of dollars.

This compl't further states, that the said George, in his lifetime, conveyed to the said William one or more of the tracts mortgaged as aforesaid, by said George, to this compl'ts testator, in trust and confidence between them, that the same should be for the benefit of the said George; and that the said William has since sold and conveyed one of said tracts, to wit: the mill tract in Indiana, for the sum of one thousand dollars, and payment has been made therefor. This compl't states, that the said William has not accounted for the monies received by him as afs'd, or any part thereof, and that he stands justly indebted therefor, to the representatives of said George. He states, that the said George died intestate, and

that no adm'on has been granted of his estate. This compl't states, that all the allegations af's'd are within the knowledge of all the defendants, or such of the brothers and sisters of said George as are alive, as he believes; and he prays that they may answer hereto on oath, and particularly, that they set forth what lands have been conveyed by said George, to said William, and the true considration, objects and trusts thereof, distinctly, specially and fully, and that the said William set forth what sales he has made, and at what prices; and he prays that he may have such relief as he may be entitled to.

GRAYSON, &c.
for Compl't.

At a Circuit Court held for the Jefferson circuit, at the court house in Louisville, on the 19th day of January, 1824, came the defendants, Isaac Clark and Benjamin Temple, and wife, by their counsel, and filed their answers to the complainant's bills, which answers are as follows, to wit:

"The separate answer of Isaac Clark, to the bill and amended bills, filed in the Jefferson Circuit Court by John Thruston's Executor against him, &c.

"This respondent, saving, &c., for answer says, that he knows nothing of the execution of the mortgage or debt, mentioned in the bill. He knows nothing of the land mortgaged, and did not know before the filing of this bill, that G. R. Clark ever owned such land. This respondent does not admit or believe that G. R. Clark died seised or possessed of two tracts of land of 36,000 acres, each below Tennessee river, or of any other land. He denies that any land or other property descended to him by the death of said G. R. Clark; this defendant has no knowledge of any of the other allegations in said bill; and having fully answered, prays to be hence dismissed, &c.

ISAAC CLARK.
DENNY & NICHOLAS, *P. D.*

JEFFERSON COUNTY, *sct:*

This day Isaac Clark made oath before me, a justice of the peace, for the county aforesaid, that the statements made by him in the foregoing answer are true, to the best of his knowledge, information and belief.

Witness my hand, this 3d day of Jan'y, 1824.

F. COSBY, *J. P. J. C.*

The answer of Benjamin Temple and Eleanor E. Temple, to a bill and multifarious amendments, in chancery exhibited against themselves and others, as heirs of G. R. Clark, dec'd, in the Jefferson Circuit Court, by Edmund H. Taylor, ex'r of John Thruston, dec'd.

"These respondents, saving and reserving to themselves all manner of benefit and exceptions to the manifold errors, misstatements and falsehoods in said bill and amendments contained, for answer to so much thereof, as they are advised is material for them to answer, say, they have never rec'd the value of one cent, in real or personal property, by descent or otherwise, from G. R. Clark or Jno. H. Clark, dec'd. That they know nothing personally of any property of any description, claimed by G. R. Clark; they well recollect very shortly after their arrival in Kentucky, in the spring of 1802, that the said G. R. Clark was generally said by his friends and relations, to be totally insolvent, and his brother William Clark had been seriously injured by having paid considerable sums of money as security for said G. R. Clark. They also well remember that the said William Clark was apparently much distressed, at the necessity he was under of selling his farm, and place of residence, near Louisville, called Mulberry Hill, to pay a security debt for G. R. Clark; they further say, they never heard of the debt claimed, or mortgage referred to by the complainant, Edmund H. Taylor, until after the filing of the said bill; they are led to wonder why the said complainant should so long quietly permit the said William Clark to pocket the wealth of the said G. R. Clark, without prosecuting his testator's claim, and why the said mortgage was not recorded; viewing the reasons assigned as *inconsistent* and frivolous pretences. They deny all fraud, confederacy and combination, and don't believe any such exists; they have heard of the various deaths mentioned in said bill and amendments; they have not personal knowledge of the truth of any of the various allegations in said bill and amendments, save the heirship set forth, and do not admit these prove them. They pray to be dismissed with their costs, from further molestation and costs, and for such other and further relief as to equity belongs, and their case requires.

BENJ. TEMPLE,
ELEANOR E. TEMPLE."

"KENTUCKY, WARREN COUNTY, *sct:*

"Personally appeared before me, Wm. R. Payne, a justice of the peace for said county, Benj. Temple, and made oath that the statements contained in the foregoing answer, to a bill in chancery and amendments, exhibited against them in the Jefferson circuit, are true to the best of his knowledge and belief.

WM. R. PAYNE, *J. P. W. C.*"

"At a Circuit Court held as aforesaid on the 28 day of January, 1824, came the parties by their counsel, and on the motion of the defendants, it is ordered, that this suit be continued at their costs until the next term of this court. Therefore it is considered by the court, that the complainant recover of the said defendants his costs occasioned by said continuance; and on the motion of the complainant, leave is given him to retake the depositions of Humphrey Marshall, John Howard, Worden Pope, and Charles M. Thruston, to be read on the trial of this suit; provided, the defendants shall have legal notice of the time when, and place where, the same shall be taken; and on the further motion of the compl't, leave is given him to take the deposition of John Logan, one of the defendants in this cause, to be read on the trial of this cause; provided, the def'ts shall have reasonable notice of the time when, and place where, the same shall be taken, which deposition shall be subject to all legal exceptions; and on the further motion of the complainant, a dedimus is awarded him to take the depositions of Henry Hurst and Gen'l W. Johnston and others, of the State of Indiana, to be read on the trial of this cause; provided, the def'ts shall have legal notice of the time when, and place where, the same shall be taken; which dedimus shall be directed to, and may be executed by any two justices of the peace, or notary public of said State.

And on the same day came the parties, by their counsel; and on the motion of the def't, Gen'l William Clark, leave is given him to take the deposition of Fanny Fitzhugh, a defendant, to be read on the trial of this cause; provided, the complainant shall have legal notice of the time when, and place where, the same shall be taken; which deposition shall be subject to all legal exceptions. And on the further motion of the said Clark, leave is given him to take the deposition of Charles W. Thruston, to be used on the trial of this cause; provided, the complainant shall have legal notice of the time when, and place where, the same shall be taken."

At a Circuit Court held for the Jefferson Circuit, at the court-house in Louisville, on the eighth day of March, 1824, came the def't, Gen'l William Clark, by his counsel, and filed his answer to the complainant's amended bill in this cause; which answer is in the words and figures following, to wit:

The separate answer of William Clark, one of the defendants of the third amended bill of Edmund H. Taylor, only acting executor of the last will and testament of John Thruston, deceased.

Complainant's third amended bill, answereth and saith: that the true consideration for which the deed was executed, from George Rogers Clark to him, the defendant, is concisely stated and expressed upon the face of said deed. In addition to the large sums

of money paid by this defendant, for and on account of his deceased brother, various services had been rendered and difficulties encountered for him, of a nature not susceptible of any precise estimation, or remuneration in money, which the grantor in said deed intended thereby to compensate. This defendant again repeats, that said conveyance was not made and received, nor intended to be made or received, in trust or upon confidence of any sort, express or implied, nor exclusively to bring Humphrey Marshall to terms, in relation to a contract between him and said George, for said lands, or to obtain a vacation thereof, in any other manner or by any other means, than the regular prosecution of a suit; nor can the respondent discern or imagine, how else that object could have been attained, or in any degree facilitated by the conveyance from George R. Clark to this defendant. The lands *was* known to be encumbered at the time, and it was the wish and intention of this defendant to take the necessary steps to get it freed therefrom, and the understanding between him and the grantor, that it should be done entirely at the expense of this defendant; and that the grantor should be held legally responsible, only so far to refund the purchase money in proportion to the quantity of land that might ultimately be lost.

"This defendant wished to bring Humphrey Marshall to terms, and conversed with Mr. Worden Pope on the subject, to whom he offered 1000 acres of the land, if he would attend to the interest of this defendant, (who expected to be absent, and was absent three years,) against the claim of H. Marshall, but was not the consideration upon which the conveyance was made; nor has this respondent any recollection of having used any expressions to Mr. Pope, or any other person, that could induce a belief that the conveyance from G. R. Clark was made to him in trust, or for any such purpose as that alleged.

"From the time the deed was executed, he considered himself legally entitled to the premises conveyed, in such manner and to such extent as the said G. R. Clark *had* power, right and authority, to sell and convey the same; and shortly afterwards, on the 2d day of October, 1803, this respondent executed a deed of conveyance for a part of the premises, to Mrs. Fanny Thruston, not doubting for a moment his full and entire right to do so. This respondent freely admits, that he proposed to make a division of part of the said lands between a portion of the relatives and representatives of Geo. R. Clark; that the same was a voluntary offer on his part, in consideration of the services and assistance rendered this defendant, in the prosecution of his claim against H. Marshall, and from a sense of natural justice and affection, and not in pursuance of, or compliance with any express or implied trust, confidence or other consideration. This respondent also freely admits, that if, during the life time of the s'd Geo. R. Clark, the contract between him and the said Humphrey Marshall had been fulfilled and the money

paid, he should have felt it his duty, as a brother, to have retained only the amount due him at the time, together with the interest thereon, and what might have been deemed a reasonable compensation for his services and trouble. But the conveyance from the said Geo. R. Clark to this respondent, was not conditional or predicated upon any contract or agreement that this respondent should do so; and this respondent again repeats, and expressly avers, that at the time said conveyance was executed, it was the belief of the parties concerned, and others acquainted with the transaction, that (situated and encumbered as the lands were,) the consideration for which they were sold and conveyed to him was a full and ample one.

"This respondent further states, that some time in the year 1818, a conditional contract was entered into with Col. C. S. Todd, for the disposition of the land below the Tennessee. Col. Todd, for certain reasons, wished to get a conveyance signed by the heirs of G. R. Clark; and Mr. Worden Pope accordingly prepared deeds for them all to execute, in which it was distinctly expressed that they *released* only such title in law or equity, as they possessed, or might be supposed to possess, without making themselves liable, or intending to make themselves liable, or in any way responsible for the title which was considered as vested in this respondent, and passing by the conveyance from himself and wife. The contract with Col. Todd, however, never was carried into effect; afterwards, in the year 1820, Mr. Pope prepared a deed from this respondent and wife to Humphrey Marshall, in compliance with a contract entered into between him, the said H. Marshall, and this respondent, to carry into effect the original agreement between him, the said H. Marshall, and the said G. R. Clark. To this last deed, the heirs of G. R. Clark were not parties, nor was it believed that they possessed any title in law or equity, that could make it necessary or proper for them to join in the conveyance, which had been done in the first instance purely to gratify Col. Todd, and from a belief, on their part, that if it did no good it would do no harm. To the reiterated charge, that the said Geo. R. Clark conveyed to the said William Clark, sundry tracts of land in the now State of Indiana, upon a trust or confidence between them, &c., respondent has no other answer to make, than that it is false; and that all the information that he has on the subject was given in his, this defendant's answer, to the complainant's original and second amended bill of complaint; and he sincerely hopes the complainant will consider this answer a sufficient traverse of the fact. The land sold Wm. P. Galt, was acquired by this respondent under the will of his father. The land sold to Fetter & Hughes, was never the property of George R. Clarke; that the money paid by Fetter and Hughes was applied to the use of George Rogers Clark; without this, that *that* there is any other matter material for this respondent to answer

unto, in the complainant's said third amended bill, not hereby and herein fully answered, traversed, or denied, that is true.

WM. CLARK.

Circuit Court, February Term, 1824.

STATE OF MISSOURI, COUNTY OF ST. LOUIS:

"I, Archibald Gamble, clerk of the Circuit Court for the county of Saint Louis, do certify that William Clark personally appeared in open court, and made oath that the facts contained in the foregoing answer, and stated of his own knowledge, are true; and those facts stated upon the information of others, he believes to be true.

[L. S.] Given under my hand and seal of office, at St. Louis, this 3rd day of February, A. D. 1824.

ARCHIBALD GAMBLE, *Clerk.*

MISSOURI, COUNTY OF ST. LOUIS, *sct.*

I, Alexander Stuart, Judge of the third Judicial Circuit in the State of Missouri, comprehending the county of St. Louis, do hereby certify that the within certificate of Archibald Gamble, clerk of the Circuit Court of the said county, is in due and common form.

Given under my hand and seal, the third day of February, 1824.

ALEX'R STUART. [SEAL.]

At a Circuit Court held as aforesaid, on the 28th day of April, 1824, came the complainant, by his counsel, and on his motion, leave is given him to take the depositions of Humphrey Marshall and John J. Marshall, John Howard, Samuel T. Fitzhugh, William Tompkins, Charles W. Thruston, Worden Pope, and William C. Galt, to be read on the trial of this cause, provided the def'ts have legal notice of the time when, and place where the same shall be taken; and at a circuit court held as aforesaid, on the 1st day of May, 1824, ordered that this cause be continued until the next term.

At which time, to wit, a circuit court held as aforesaid, on the 16th day of June, in the same year, came the parties, by their counsel, to wit, the complainant and the defendant, William Clark, and this cause came on for final hearing on the bills, answers, exhibits, and depositions filed herein, and the same was argued in part, and adjourned over for further hearing until to-morrow morning. The said defendant, William Clark, presented three bills of exceptions, numbers one, two and three, which were signed and sealed by the court, and made part of the record in this cause, and leave is given the said complainant, on to-morrow, to prove the execution of the mortgage mentioned n the bill by John Howard, one of the subscribing witnesses thereto.

THRUSTON'S Ex'or, vs. CLARK, &c. } In Chancery.

"The complainant offered to read the deposition of Worden Pope, marked A; and to shew his competency, the complainant read the release from said Pope, attached to his deposition marked B, and read the notice and certificate marked C. The defendant, William Clark, objected to the reading of said deposition, because the notice was illegal and unreasonable—because there is no legal proof of the service of s'd notice, and because the deponent, Worden Pope, was incompetent to give testimony on account of interest, which interest he did not and could not release, so as to render him competent. The court overruled said objection and admitted said Pope's deposition to be read in evidence; to which the said defendant, William Clark, excepts, and prays, &c. It appeared to the court, that at the time notice was given to take said deposition, said def't, Wm. Clark, was a non-resident of Kentucky.

JNO. P. OLDHAM. [SEAL.]

"On the hearing of this cause, the compl't read as against the def't, Gen'l William Clark, of Missouri, the deposition of Worden Pope, marked A—the deposition of Humphrey Marshall, marked L—the deposition of John J. Marshall, marked M—the deposition of Charles W. Thruston and the paper attached to it, marked W; and these were all the depositions read against said William Clark on the hearing of s'd cause; to the reading of which, s'd Wm. Clark excepts, &c. No objections were taken to the reading of the depositions of John J. Marshall, Charles W. Thruston, and Humphrey Marshall.

JNO. P. OLDHAM. [L. S.]

"Be it remembered, that after the calling of this cause, and after it had been gone into, and after reading the bills, answers and several depositions, the complainant asked leave to prove the execution of the mortgage filed as an exhibit with his original bill, by oral testimony at the bar; to the granting leave to do which def't objected, but the court granted the leave to compl't to prove said exhibit on to-morrow, by oral testimony at the bar, to which the def't excepts, and prays this, his bill of exceptions, may be signed, sealed, &c. It was agreed, before the opening of the cause, by the counsel on both sides and the court, that the argument of the cause was not to commence until the morrow.

JNO. P. OLDHAM. [L. S.]

"And at a circuit court, continued and held as af'sd, on the 17th day of June, 1824, came as well the complainant, by his counsel, as the defendant, General William Clark, by his counsel; and the

said Clark filed a bill of exceptions, No. four, which was signed and sealed by the court, and made part of the record in the cause, and the argument of the counsel on both sides being concluded, and the court not being sufficiently advised of, and concerning the premises, took time to consider, &c.

THRUSTON'S Ex'r,
vs.
CLARK, &c.

"The def't, William Clark, moved the court to suppress the depositions of J. J. Marshall, Forts. Cosby and Wm. Tompkins, as to so far as respected said def't, Wm. Clark, but the court refused, but stated that so much of the testimony contained in said depositions, as could not be legitimately used against the said William Clark, would be disregarded by the court in the consideration and decision of said suit; to which defendant excepts, &c.

JNO. P. OLDHAM. [L. S.]

And at a circuit court held for the Jefferson Circuit, at the court house in Louisville, on the twenty-second day of November, one thousand eight hundred and twenty-four, came the parties, by their counsel; and the court being now sufficiently advised of, and concerning the premises, are of opinion that the heirs of George Rogers Clark have now no title to the mortgaged premises in complainant's bill mentioned, and that the conveyance set up by the defendant, William Clark, to the two tracts of land in said bill mentioned, one of thirty-seven thousand acres, and the other of thirty-six thousand nine hundred and sixty-two acres, both lying on the Ohio river, and patented to said George Rogers Clark in his lifetime, by patents bearing date the 15th September, 1795, is fraudulent as to the creditors of said George Rogers Clark, and at most, can only operate as a mortgage to secure to said William Clark the payment of twenty-one hundred dollars, the consideration expressed in said conveyance, with interest thereon at the rate of six per centum per annum, from the 28th July, 1803, until payment; and that the said George Rogers Clark, in his lifetime, had an equity of redemption on said premises, and that the same has descended upon, and is now assets in the hands of said heir, for the payment of the debts of s'd George Rogers Clark.

It is therefore decreed and ordered, that said lands, or so much of both or either of said tracts, be sold at public auction in Louisville, to the highest bidder, upon a credit of two years, the purchaser giving bond, with good security, for the payment of the purchase money with interest, as will be sufficient to satisfy and pay the compl't. the sum of five hundred and thirty-four pounds three shillings and five pence, with interest thereon at six per centum per annum from the last day of May, in the year 1804, until pay-

ment, being the debt in the complainant's bill and mortgage mentioned, and also the costs by the compl't in this suit. The sale to be made subject to the mortgage or lien of said William Clark upon said lands, for the payment of the $2,100 aforesaid, with interest thereon as aforesaid, to him. And it is further ordered and decreed, that Samuel Dickinson be appointed a commissioner; and unless the said sum of £534 3*s*. 5*d*., with interest thereon as aforesaid, and the costs aforesaid, be paid to the complainant on or before the first January next, that said commissioner make sale as above directed, of the lands aforesaid, on such day and place in Louisville as he shall appoint, first advertising the time and place of sale by the space of sixty days, in some newspaper printed in Louisville aforesaid, and also at the court house door, in said town, and that he make report of his proceedings herein to the next court. From which decree the said defendants pray an appeal to the honorable the Court of Appeals of this State, which is granted them upon their entering into bond with Charles W. Thruston, their security, in the Clerk's office of this Court, within thirty days, in the penalty of five thousand dollars, conditioned that the said defendants shall prosecute the said appeal with effect, or that, on failure thereof, *that* they shall pay to the complainant the amount of the aforesaid decree, and also all damages and costs which shall or may be awarded against the said defendants by the said Court of Appeals, in this cause.

On the 18th day of December, 1824, the following appeal bond was executed, to wit:

"Know all men by these presents, that we, William Clark and Charles W. Thruston, are held and firmly bound unto Edmund H. Taylor, executor of John Thruston, deceased, in the full and just sum of five thousand dollars, current money of the United States; for the payment whereof, well and truly to be made unto the said Taylor, executor as aforesaid, his heirs, ex'rs, adm'rs, or assigns, we and each of us do hereby bind ourselves, our heirs, ex'rs, and adm'rs, jointly and severally, firmly by these presents; sealed with our seals, and dated this 18th day of December, 1824. The condition of the above obligation is such, that whereas, in a suit in Chancery depending in the Jefferson Circuit Court, in the State of Kentucky, wherein the said Edmund H. Taylor, executor as aforesaid, was compl't, and the said William Clark, and others, heirs and representatives of General George R. Clark, dec'd, were defendants, the said court, on the 22d day of November, 1824, made and recorded the following decree in the said cause, to wit: This day came the parties, by their counsel, and the court being now sufficiently advised of and concerning the premises, are of opinion that the heirs of George Rogers Clark have now no title to the mortgaged premises in compl'ts bill mentioned, and that the convey-

ance set up by the def't, William Clark, to the two tracts of land in said bill mentioned, one of thirty-seven thousand acres, and the hoter of thirty-six thousand nine hundred and sixty-two acres, both lying on the Ohio river, and patented to said George Rogers Clark in his life time, by patents bearing date the 15th September, 1795, is fraudulent as to the creditors of the said George Rogers Clark, and at most can only operate as a mortgage to secure to said William Clark the payment of twenty-one hundred dollars, the consideration expressed in the said conveyance, with interest thereon at six per centum per annum, from the 28th July, 1803, until payment. And that the said George Rogers Clark, in his lifetime, had an equity of redemption in said premises, and that the same has descended upon and is now assets in the hands of said heirs, for the payment of the debts of the said George Rogers Clark. It is therefore decreed and ord red, that the said lands, or so much of both or either of said tracts, be sold at public auction, in Louisville, to the highest bidder, upon a credit of two years, the purchaser giving bond, with good security, for the payment of the purchase money, with interest, as will be sufficient to satisfy and pay complainant the sum of five hundred and thirty-four pounds three shillings and five pence, with interest thereon at six per centum per annum from the last day of May, in the year 1804, until payment; being the debt in the complainant's bill and mortgage mentioned, and also the costs of the complainant in this suit. The sale to be made subject to the mortgage or lien of said William Clark upon said lands, for the payment of the $2,100 afs'd, with interest thereon as afs'd, to him. And it is further ordered and decreed, that Samuel Dickinson be appointed a commissioner; and unless the said sum of £534 3*s.* 5*d.*, with interest thereon as afs'd, and the costs as afs'd, be paid to the complainant on or before the first January next, that said commissioner make sale as above directed, of the lands afs'd, on such day and place, in Louisville, as he shall appoint, first advertising the time and place of sale by the space of sixty days, in some newspaper printed in Louisville afs'd, and also at the court house door in said town; and that he make report of his proceedings herein to the next court. From which decree the said defendants on the same day prayed an appeal to the honorable the Court of Appeals of the State afs'd, which was granted them upon their entering into and giving this bond within thirty days.

Now, therefore, in case the said William Clark, and the other heirs of the said George Rogers Clark and Charles W. Thruston, or either of them, or either of their heirs, ex'rs, or adm'rs, shall prosecute the said appeal with effect, or that, on failure thereof, shall pay to the said complainant the amount of the aforesaid decree, and also all damages and costs which shall or may be awarded against the said William Clark, and the other heirs of the said George Rogers Clark, dec'd, by the said Court of Appeals, in the

cause aforesaid, then the foregoing obligation shall be void; otherwise the same shall be and remain in full force and virtue.

C. W. THRUSTON. [L. S.] [L. S.]

Test:
ROBERT TYLER, D. C.

At a Circuit Court held for the Jefferson circuit, at the court house in Louisville, on the twenty-fifth day of October, one thousand eight hundred and twenty-six, the commissioner appointed to carry into effect the decree pronounced herein at a former term of this court, this day produced his report in court, which is examined and approved, and the court allows to said commissioner the sum of ten dollars, for his services herein, which the complainant is directed to pay to him; and the clerk of this court is directed to tax said sum of ten dollars in the bill of costs against the defendant; and the court now finally orders and decrees, that the compl't recover of the defendants his costs herein, for which he may have execution.

EDMUND H. TAYLOR, ex'r of John Thruston, dec., Comp.
against
WILLIAM CLARK, WILLIAM CROGHAN and LUCY, his wife, OWEN GWATHMEY, &c., Def'ts.
} In Chancery.

"By virtue of, and in obedience to a decree rendered by the Jefferson Circuit Court in the above case, the undersigned commissioner, named herein to make sale of the equity of George Rogers Clark in and to the mortgaged premises in the mortgage of said George Rogers Clark to William Clark mentioned, advertised the aforesaid premises in the Public Advertiser, a public, authorised newspaper, printed in Louisville, Ky., on the 6th day of May, 1826, subject to the payment of William Clark's debt, or as much thereof as should be sufficient to satisfy and pay the debt due the complainant, and the interest and all costs; and appointed the sale to take place before the court house door, in Louisville, Ky., between the hours of 11 o'clock A. M. and 3 o'clock P. M., of the 10th day of July, 1826, upon a credit of two years, for specie, the purchaser or purchasers giving bond and good security, with interest thereon from the sale. The printer's certificate, and a copy of the advertisement, which was published for at least sixty days in the newspaper, and for the same time at the court house door, in said town, is hereto annexed, and made a part of this report. Accordingly, on the day and between the hours aforesaid, the undersigned attended before the court house door, in the town of Louisville, and offered and cried the premises aforesaid, for sale, on the conditions aforesaid, when and where George Woolfolk, Esq., became the purchaser, for General William Clark, of the whole of the mortgaged premises, for the debt, interest, and all

costs decreed to be paid Edmund H. Taylor, executor of John Thruston, deceased, subject to the claim of said William Clark, one of the defendants, he being the highest and best bidder for the same; and it was accordingly cried and struck off to him. The aforesaid Woolfolk having produced a receipt from Charles M. Thruston, Esquire, attorney for the compl't, and one of the heirs, acknowledging the payment of twenty-five hundred dollars, by William Clark, as being in full for the aforesaid debt, interest, &c., no bond or note has been taken from him, which receipt is herewith filed and offered as a part of this report: all of which is respectfully submitted.

SAML. DICKINSON,
Com'r.

Commissioner's Sale.

EDMUND H. TAYLOR, Ex'r of John Thruston, dec'd, Compl't, *against*
WILLIAM CLARK, William Croghan, and Lucy, his wife, Owen Gwathmey, John Gwathmey, Samuel Gwathmey, Geo. C. Gwathmey, Temple Gwathmey, Isaac R. Gwathmey, George Woolfolk, and Catharine, his wife, Richard C. Anderson, Jr., and Betsey, his wife, Thomas Bullitt, and Diana, his wife, Peter Priest, and Lucy, his wife, Francis Jones, Wm. H. Boothe, Dennis Fitzhugh, and Frances, his wife, John Logan, and Ann, his wife, Cecelia Anderson, John H. Clark, William Clark, Geo. W. Clark, Benjamin Temple, and Eleanor, his wife, James A. Pearce, and Ann, his wife, Def'ts.

By virtue of a decree of the Jefferson Circuit Court, in the above cause, the undersigned commissioner, therein named, will sell, on the 10th day of July, 1826, to the highest bidder, at the court house door, in Louisville, between the hours of 11 o'clock A. M., and 3 o'olock P. M., two tracts of land, patented to Gen. George R. Clark, one containing 37,000 acres, and the other 36,962 acres, both lying on the Ohio river, or as much of either, or both, of said tracts of land, (subject to a mortgage of Gen. William Clark, to secure the payment of $2,100, with interest from the 28th day of July, 1803), as will be sufficient to satisfy and pay the debt decreed to be paid, with interest, and all costs, upon a credit of two years, the purchaser or purchasers to give bond and good security, with interest thereon, from the date. The two tracts of land aforesaid are thus described, when brought into one survey, and as mortgaged to said Gen. William Clark: Beginning at three maples, two ashes, and a hackberry, on the bank of the Ohio, at the mouth

of the Tennessee river; running from thence south 16 deg., west 1,280 poles, crossing a creek to two white-oaks and three maples, standing on the bank of the creek that empties into the Ohio, at the lower end of the island at the mouth of Tennessee; thence north 74 deg., west 5,598 poles, crossing a fork of Massac creek at 1,830 poles, another at 2,340 poles, a branch at 3,000 poles, and another at 3,396 poles, passing a corner, five black oak saplings in the head of a hollow, at 3,840 poles, to a white oak and hickory, by a small drain, corner to George Smith; running from thence with his line, north 58 deg., west 2,166 poles, to two maples and a cotton-wood tree, standing on the Ohio river at the lower side of a small creek, and the fifth below Massac; running from thence up the Ohio, binding thereon, 8,640 poles, to the beginning.

Due attendance will be given by the commissioner.

SAML. DICKINSON.

May 6, 1826.

"This is to certify, that the annexed has been advertised regularly in the Louisville Public Advertiser, a public authorised newspaper, printed in Louisville, weekly, from the 6 day of May, 1826, until the 10 day of July, 1826.

"Given under my hand, as printer and publisher, this 10 day of July, 1826.

S. PENN, Jr."

"Thruston's Ex'or, *vs.* G. R. Clark's h'rs. } In Chancery.

"I acknowledge to have rec'd of Gen'l William Clark twenty-five hundred dollars, in full discharge of a decree, in the name of Thruston's Exr., agt. G. R. Clark's heirs, in the Jefferson circuit court. The decree is therefore satisfied, and the commissioner, Sam'l Dickinson, is hereby authorised and directed to return it satisfied, without taking bond of the purchaser of the sale made on to-day, 10 July, 1826. The above sum of twenty-five hundred dollars was by way of compromise, and was the whole amount ever rec'd by me on said decree. This receipt is not to operate as a discharge of the costs, they being yet to be paid by the def'ts.

CHS. M. THRUSTON,
Complts. Atty. and App."

At a circuit court, held as aforesaid, on the 18 day of November, 1826, came the parties, by their counsel, and filed a bill of revivor in this cause against William Gwathmey, Owen Gwathmey, Eleanor Gwathmey, and Matilda Gwathmey, heirs of John Gwathmey, dec'd; and against Elizabeth Anderson, Arthur Anderson, and Nancy Anderson, heirs of Richard C. Anderson and Betsy Ander-

son, his wife, dec'd; and on the motion of the complt., it is ordered that George C. Gwathmey be, and he is hereby appointed guardian ad litem, to Owen, Eleanor, and Matilda Gwathmey, and that he defend this suit for them; and thereupon they, by the said Gwathmey, their guardian ad litem, as afs'd, filed their answer to the said bill of revivor in this cause. And it is further ordered, that the said George C. Gwathmey be, and he is hereby appointed guardian ad litem, to Elizabeth, Arthur, and Nancy Anderson, and that he defend the same for them; and thereupon they, by the said George C. Gwathmey, their guardian ad litem, as afs'd, filed their answer to the said bill of revivor, in this cause. And the defendant, William Gwathmey, filed his answer to the said complt's bill of revivor, filed against him in this cause; and by consent of parties, it is ordered that this suit be, and the same is hereby revived against the said William Gwathmey, Owen Gwathmey, Eleanor Gwathmey, and Matilda Gwathmey, and against Elizabeth Anderson, Arthur Anderson, and Nancy Anderson, defts. to this suit, and may be prosecuted in the name of said compl't. accordingly.

The commissioner appointed to carry into effect the interlocutory decree pronounced herein, having carried into effect said decree, and the same having been returned and filed herein, the same is now again confirmed by the court; and the court now decrees and orders that the defendants in this suit do, on or before the 1st day of the next term of this court, convey the lands in the bill mentioned, and purchased by the sale made under said interlocutory decree, by the deft., William Clark, to him, said Clark, by deed in fee simple, conveying their title only. And on failure thereof, that Samuel Dickinson be, and he is hereby appointed commissioner to make said conveyance for them; and the period of twelve months is given the infant defendants in this cause, after they shall attain the age of twenty-one years, to open and shew cause against this decree.

"Edmund H. Taylor, in his suit in the Jefferson Circuit Court, against William Clark and others, heirs of G. R. Clark, would state, that since the rendition of the decree in this cause, and the sale thereunder, John Gwathmey has departed this life, and William, Owen, Eleanor, and Matilda Gwathmey, are his heirs; that the said William is an adult, and the rest are infants. That Richard C. Anderson, Jr., and Betsy, his wife, two of s'd defts. and heirs of said G. R. Clark, have died since s'd sale under said decree, and that both of them died intestate, and their heirs are Elizabeth, Arthur, and Nancy Anderson, *are* all infants. He prays that this suit may be revived against them, and said infants answer this bill of revivor by George C. Gwathmey, their guardian ad litem, and that said William answer and revived against him, and that they all answer, &c.

THRUSTON, *P. C.*"

"The joint answer of Owen, Eleanor, and Matilda Gwathmey, infant heirs of John Gwathmey, dec'd, by George C. Gwathmey, their guardian ad litem. They answer and admit they are heirs, as afs'd; know nothing of the merits and matters of this case, and submit to the court for their protection of their rights; and having fully answered, pray to be dism'd with their costs.

OWEN GWATHMEY,
ELEANOR GWATHMEY, and
MATILDA GWATHMEY,
By their guardian ad litem,
GEO. C. GWATHMEY."

"The joint answer of Elizabeth Anderson, Arthur and Nancy Anderson, heirs of Richard and Betsy Anderson, infants of tender years, by their guardian ad litem, George C. Gwathmey. They admit that they are heirs as afs'd; they submit their rights to the court; know nothing of the matters in this suit; and having fully answered, pray to be dism'd with their costs, &c.

ELIZA. ANDERSON,
ARTHUR ANDERSON,
NANCY ANDERSON,
By guardian ad litem,
GEO. C. GWATHMEY."

"The answer of William, the only adult heir of John Gwathmey, to a bill of revivor filed against him and others in the Jefferson circuit court, by Edm'd H. Taylor, Ex'r. of John Thruston, dec'd. Respond't for answer, says: that he is an heir as afs'd; is willing said suit be revived; and having answered, prays to be dismissed with his costs, &c.

WILLIAM GWATHMEY,
By GEO. C. GWATHMEY."

At a circuit court, held for the Jefferson circuit, as afs'd, on the 7th day of June, 1827, it appearing to the satisfaction of the court that Geo. Woolfolk was the purchaser of the land decreed to be sold herein, and that such appears the fact, by the commissioners' report, and by an order in this cause, made at the October term, 1826, of this court, William Clark was stated to have been the purchaser of s'd lands, which was not the case; the court now corrects said order of Octo. term, 1826, and confirms hereby the commissioner's report, returned herein, at a former term of this court; and the court now decrees and orders that the defendant's do, on or before the 9th day of June, 1827, convey, by deeds, in fee simple, their title only to s'd Woolfolk, the said lands sold and purchased by him; and that on failure thereof, Samuel Dickinson be, and he is hereby appointed a commissioner to do it for them.

And at a circuit court, held as aforesaid, on the 16 day of June,

1827, Samuel Dickinson, the commissioner appointed herein, produced here in court a deed to George Woolfolk, the purchaser of the lands sold under a former decree herein, from the defts. to said Woolfolk, which deed is examined, approved by the court; and said deed having been acknowledged and delivered by said Dickinson, as the act and deed of the parties thereof, the clerk of this court is directed to record said deed in the book kept by him for that purpose; and the court orders that the defendants pay to s'd Dickinson the sum of ten dollars for his services, in full, for and on account of selling and conveying, &c.

The following notices and depositions were filed by the parties in the foregoing cause, to wit:

James A. Pearce and Nancy, his wife, Isaac Clark, William H. Boothe, Temple Gwathmey, George C. Gwathmey, and Mrs. Dianah Bullitt, Peter Priest and Lucy, his wife, Mrs. Frances Fitzhugh, and Mrs. Lucy Croghan, George Woolfolk and Catharine, his wife, Isaac R. Gwathmey and Elizabeth, his wife, and Mrs. Frances Jones—Take notice, that on the first Thursday in April, 1824, at the house of Humphrey Marshall, in the town of Frankfort, Kentucky, I shall take the deposition of s'd Marshall and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson circuit court, in Kentucky, in which said suit, I, as executor of John Thruston, dec'd, am complainant, and you and others are defendants; and if not taken on that day, I shall attend at the s'd Marshall's house on the 1st Friday in the same month, to take his said deposition, and others; and on the 1st Saturday in the same month, at the tavern of Daniel Weisiger, in the said town of Frankfort, I shall take the deposition of John H. Todd and others, to be read as evidence in the suit afs'd; and on the third Thursday, in the same month, at the office of Charles M. Thruston, in town of Louisville, Kentucky, I shall take the deposition of Henry Hurst, Oliver, William C. Galt, James Hughes, and others, to be read as evidence in the suit aforesaid, and I shall continue at the last mentioned place from day to day, Sundays excepted, until said depositions are taken.

Resp'y, &c.,

EDM'D H. TAYLOR,

Feb'y 21, 1824. *Exr. of Jno. Thruston, dec'd.*

I acknowledge to have rec'd a copy of this notice for myself and wife. March 31, 1824.

GEO. WOOLFOLK,
CATHA. WOOLFOLK,
FRANCES M. JONES.

I acknowledge to have rec'd a copy of this notice for myself and wife. March 31, 1824.

ISAAC R. GWATHMEY,
ELIZABETH C. GWATHMEY.

Personally appeared before the undersigned, a justice of the peace for the county of Franklin, Commonwealth of Kentucky, Robert Todd, (R. S.) who made oath that he did, on the 31st day of March, 1824, before 8 o'clock, (A. M.) deliver a true copy of the within notice to the persons whose names are affixed to the above receipts or acknowledgments.

J. SWIGERT, *J. P.*

Ap'l. 2d, 1824.

SAMUEL GWATHMEY, Esq.

Take notice, that on the 29th day of this month, at the Mansion House in the town of Frankfort, Kentucky, I shall take the deposition of Col. Charles S. Todd and others, to be read as evidence in a certain suit in chancery depending in the Jefferson Circuit Court, in which suit I, as Ex'r. of Jno. Thruston, dec'd, am complt., and you and others are defendants; and I shall continue at the last mentioned place, Sundays excepted, until said depositions are taken; and on the 3d day of June, 1824, at the office of Thruston and Richardson, in the town of Louisville, Kentucky, I shall take the deposition of John Howard and others, to be read as evidence in the suit afs'd, and I shall continue at the same place from day to day, Sundays excepted, until said depositions are taken.

Yours, &c.,

EDM'D H. TAYLOR,
Exr. of Jno. Thruston, dec'd.

May 21, 1824.

I acknowledge service, May 21, 1824.

S. GWATHMEY.

George Woolfolk, Esq., and Catharine, his wife, Richard C. Anderson, jr., Elizabeth, his wife, and George C. Gwathmey, John Logan and Nancy; his wife, and Thomas Bullitt and Dianah, his wife:

Take notice, that on the 3d day of June next, at the house of Humphrey Marshall, in the town of Frankfort, Kentucky, I shall take the deposition of said Marshall, and others, to be read as evidence, in a certain suit in chancery, depending in the Jefferson circuit court, in which I as executor of John Thruston, deceased, am complainant, and you and others are defendants; and also take notice, that on the 6th day of the same month, 1823, at the office of Thruston and Hawes, in *Louisville*, Kentucky, I shall take the deposition of Worden Pope and others, to be read as evidence in the suit aforesaid.

Yours, &c.

SAML. H. TAYLOR, *Executor*
of Jno. Thruston, dec'd.

I acknowledge the service of the above for myself and wife. March 31, 1823.

GEO. WOOLFOLK.

I acknowledge the service of the within notice for myself and wife. March 31, 1823.

JOHN LOGAN.

I acknowledge the service of the within notice. March 31, 1823.

GEO. C. GWATHMEY.

I acknowledge the service of the within notice for myself and wife. March 31, 1823.

THOS. BULLITT.

I acknowledge the service of the within notice for myself and wife. March 31, 1823.

R. C. ANDERSON, Jr., & Wife.

MISS CECELIA ANDERSON:

Take notice, that on the 3d day of June, 1823, at the house of Humphrey Marshall, Esq., in the town of Frankfort, Kentucky, I shall take the deposition of said Marshall and others, to be read as evidence in a suit in chancery, depending in the Jefferson circuit court, in which said suit, I, as ex'r of John Thruston, deceased, am complainant, and you and others are defendants; and also take notice, that on the 6th day of the same month, at the office of Thruston and Hawes, in Louisville, Kentucky, I shall take the deposition of Worden Pope, and others, to be read as evidence in the suit aforesaid. May 31, 1823.

Resp'y, &c.,

EDMUND H. TAYLOR, *Executor of John Thruston, dec'd.*

JEFFERSON COUNTY, *sct.*

This day Andrew Brentlinger made oath before me, that on the 31st day of May, 1823, he delivered a true copy of the within notice to the within named Cecelia Anderson.

Witness my hand, this 2d day of June, 1823.

F. COSBY, *J. P. J. C.*

James A. Pearce and Nancy, his wife, Isaac Clark, William H. Booth, Temple Gwathmey, George C. Gwathmey, Mrs. Dianah Bullitt, Peter Priest and Lucy, his wife, Mrs. Fanny Fitzhugh and Mrs. Lucy Croghan, and John Logan and Nancy, his wife.

Take notice, that on the 1st Thursday in April, 1824, at the

house of Humphrey Marshall, in the town of Frankfort, Kentucky, I shall take the deposition of said Marshall, and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson Circuit court, in Kentucky, in which suit I, as executor of John Thruston, deceased, am complainant, and you and others are defendants; and if not taken on that day, I shall attend at said Marshall's house on the 1st Friday in the same month, to take his said deposition, and others; and on the first Saturday in the same month, at the tavern of Daniel Weisiger, in the said town of Frankfort, I shall take the deposition of John H. Todd, and others, to be read as evidence in the suit aforesaid; and on the third Thursday in the same month, at the office of Charles M. Thruston, in the town of Louisville, Kentucky, I shall take the deposition of Henry Hurst, —— Oliver, William C. Galt, James Hughes, and others, to be read as evidence in the suit aforesaid; and I shall continue at the last mentioned place, (Sundays excepted,) until said depositions are taken. Feb. 21, 1824.

Resp'y, &c.,

EDMUND H. TAYLOR, *Executor of John Thruston, dec'd.*

I acknowledge to have rec'd a true copy of this notice, for myself and wife, Nancy Logan. March 26, 1824.

JOHN LOGAN.

Temple Gwathmey, Peter Priest and Lucy, his wife, and Mrs. Frances Jones, and Mrs. Frances Fitzhugh, and Samuel Gwathmey:

Take notice, that on the 3d day of June next, at the house of Humphrey Marshall, in the town of Frankfort, Kentucky, I shall take the deposition of said Marshall, and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson circuit court, in which I, as executor of John Thruston, deceased, am complainant, and you and others are defendants; and also take notice, that on the sixth day of the same month, (1823,) I shall, at the office of Thruston and Hawes, in Louisville, Kentucky, take the deposition of Worden Pope, and others, to be read as evidence in the suit aforesaid. March 31st, 1823.

EDMUND H. TAYLOR, *Executor of John Thruston, dec'd.*

I acknowledge the service of this notice. April 4, 1823.

SAML. GWATHMEY.

James A. Pearce and Nancy, his wife, Isaac Clark, William H. Booth, Temple Gwathmey, George C. Gwathmey, Mrs. Dianah Bullitt, Peter Priest and Lucy, his wife, Mrs. Fanny Fitzhugh, and Mrs. Lucy Croghan.

Take notice, that on the 1st Thursday in April, 1824, at the

house of Humphrey Marshall, in the town of Frankfort, Kentucky, I shall take the deposition of said Marshall, and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson circuit court in Kentucky, in which I, as executor of John Thruston, deceased, am complainant, and you and others are defendants; and if not taken on that day, I shall attend at said Marshall's house on the first Friday in the same month, to take his said deposition, and others; and on the first Saturday in the same month, at the tavern of Daniel Weisiger, in the said town of Frankfort, I shall take the deposition of John H. Todd, and others, to be read as evidence in the suit aforesaid; and on the third Thursday in the same month, at the office of Charles M. Thruston, in the town of Louisville, Kentucky, I shall take the deposition of Henry Hurst, —— Oliver, William C. Galt, James Hughes, and others, to be read as evidence in the suit aforesaid; and I shall continue at the last mentioned place, (Sundays excepted,) until said depositions are taken.

Resp'y, &c.,

EDMUND H. TAYLOR, *Executor of Jno. Truston, dec'd.*

February 21, 1824.

I hereby acknowledge to have rec'd a true copy of this notice; one myself, and one for my wife; Nancy Pearce. March 26th, 1824.

JAMES A. PEARCE.

Mr. Isaac Clark, in his own right, and as administrator of John H. Clark, deceased:

Take notice, that on the 3d day of June next, at the house of Humphrey Marshall, in the town of Frankfort, Kentucky, I shall take the deposition of said Marshall, and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson circuit court, in which I, as executor of John Thruston, deceased, am complainant, and you and others are defendants. And also take notice, that on the 6th day of the same month, (1823,) at the office of Thruston and Hawes, in Louisville, Kentucky, I shall take the deposition of Worden Pope, and others, to be read as evidence in the suit aforesaid. March 31, 1823.

Resp'y, &c.,

EDMUND H. TAYLOR, *Executor of John Thruston, dec'd.*

Came to hand, 14th April, 1823, and executed same day, by delivering to Isaac Clark a true copy of the within notice.

WILLIAM BUCKNER, *D. S.*
For T. BUCKNER, *S. J. C.*

James A. Pearce and Nancy, his wife, Isaac Clark, William H. Booth, Temple Gwathmey, George C. Gwathmey, Mrs. Dianah Bullitt, Peter Priest, Lucy, his wife, Mrs. Frances Fitzhugh, and Mrs. Lucy Croghan :

Take notice, that on the 1st Thursday in April, 1824, at the house of Humphrey Marshall, in the town of Frankfort, Kentucky, I shall take the deposition of said Humphrey, and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson circuit court in Kentucky, in which suit I, as executor of John Thruston, deceased, am complainant, and you and others are defendants; and if not taken on that day, I shall attend at said Marshall's house on the 1st Friday in the same month, to take his said deposition, and others; and on the first Saturday in the same month, at the tavern of Daniel Weisiger, in the said town of Frankfort, I shall take the deposition of John H. Todd, and others, to be read as evidence in the suit aforesaid; and on the third Thursday in the same month, at the office of Chs. M. Thruston, in the town of Louisville, Kentucky, I shall take the deposition of Henry Hurst, —— Oliver, William C. Galt, James Hughes, and others, to be read as evidence in the suit aforesaid; and I shall continue at the last mentioned place, (Sundays excepted,) until said depositions are taken.

Resp'y, &c.,

EDMUND H. TAYLOR, *Executor of John Thruston, dec'd.*

Feb. 21, 1824.

Executed on Mrs. Lucy Priest, by delivering her a true copy of the within notice, this 26th March, 1824. And I did at the same place, and at the same time, leave with Mrs. Lucy Priest a true of the within notice, and directed her to deliver it to her husband, Peter Priest; he, said Priest, being from home.

IRA PARKS, *C. J. C.*

JOHN GWATHMEY, Esq.:

Take notice, that on the 3d day of June, 1823, at the house of Humphrey Marshall, Esq., in the town of Frankfort, Kentucky, I shall take the deposition of said Marshall, and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson circuit court, in which said suit I, as executor of John Thruston, deceased, am complainant, and you and others are defendants. And also take notice, that on the 6th day of the same month, at the office of Thruston and Hawes, in Louisville, Kentucky, I shall take the deposition of Worden Pope, and others, to be read as evidence in the suit aforesaid.

Yours resp'y, &c.,

EDMUND H. TAYLOR, *Executor of John Thruston, dec'd.*

May 8, 1823.

Mr. Massie is furnished with a copy of the above, which he will please deliver to Mr. Gwathmey in person, immediately on *a reviving* at New Orleans, not exceeding the 19th day of May. If Mr. Gwathmey is not at home, leave it with some *which* member of his family over 16 years of age, and inform them of the contents of it. Mr. Massie will keep this copy, and note on the back of it the day he delivers the other; so that *that* he may prove the service of it, on his return; I need scarcely add, that this business is of great importance to me, personally.

C. M. T.

I delivered a copy of the within notice to John Gwathmey, on the nineteenth day of May, 1823, at his residence, on the Bayou.

ROB. MASSIE.

This day Robert Massie came in his proper before the undersigned, a justice of the peace for Jefferson county, and made oath, that on the 19th May, 1823, he delivered a true copy of the within notice to John Gwathmey. June 12, 1823.

J. FERGUSON, *J. P. J. C.*

To James A. Pearce and Nancy, his wife, Isaac Clark, William H. Booth, Temple Gwathmey, George C. Gwathmey, Mrs. Dianah Bullitt, Peter Priest and Lucy, his wife, Mrs. Fanny Fitzhugh and Mrs. Lucy Croghan:

Take notice, that on the 1st Thursday in April, 1824, at the house of Humphrey Marshall, in the town of Frankfort, Kentucky, I shall take the deposition of said Marshall, and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson circuit court, in Kentucky, in which suit I, as executor of John Thruston, deceased, am complainant, and you, and others, are defendants; and if not taken on that day, I shall attend at said Marshall's house on the 1st Friday in the same month, to take his said deposition, and others; and on the 1st Saturday in the same month, I shall, at the tavern of Daniel Weisiger, in the said town of Frankfort, take the deposition of John H. Todd, and others, to be read as evidence in the suit aforesaid; and on the third Thursday in the same month, at the office of Charles M. Thruston, in Louisville, Kentucky, I shall take the deposition of Henry Hurst, —— Oliver, William C. Galt, James Hughes, and others, to be read as evidence in the suit aforesaid; and I shall continue at the last mentioned place, from day to day, (Sundays excepted,) until said depositions are taken.

Respectfully,

EDMUND H. TAYLOR, *Executor of John Thruston, dec'd.*

February 24th, 1824.

Executed by delivering a true copy of the within notice to the within named Mrs. Fanny Fitzhugh.

IRA PARKS, *C. J. C.*

24 March, 1824.

Executed, as to Mrs. Dianah Bullitt, by delivering to Mr. Owen Gwathmey, a member of her family, and who is over 16 years old, a true copy of this notice, and at her residence; the said Mrs. Bullitt refusing to be seen and refusing to take the said copy; this 24 March, 1824.

IRA PARKS, *C. J. C.*

I acknowledge to have received a true copy of this notice, this 26th March, 1824.

GEO. C. GWATHMEY.

William Clarke, Esq., Isaac R. Gwathmey and Elizabeth, his wife, and William Clark:

Take notice, that on the third day of June, 1823, at the house of Humphrey Marshall, Esq., in the town of Frankfort, Kentucky, I shall take the deposition of said Marshall and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson Circuit Court, in which I, as executor of John Thruston, deceased, am complainant, and you and others are defendants; and take notice also, that on the 6th day of the same month, 1823, at the office of Thruston and Hawes, in Louisville, Kentucky, I shall take the deposition of Worden Pope and others, to be read as evidence in the suit aforesaid.

Yours, &c.

EDMD. H. TAYLOR, *Ex'r of*
JNO. THRUSTON, *deceased.*

I acknowledge the service of the above for myself and wife. March 31, 1823.

W. CLARKE.

I acknowledge the service of the above. March 31st, 1823.

ISAAC R. GWATHMEY,
For himself and wife.

William Clark, Esq., James A. Pearce, Nancy, his wife, and Temple Gwathmey:

Take notice, that on the third day of June, 1823, at the house of Humphrey Marshall, Esq., in the town of Frankfort, Kentucky, I shall take the deposition of said Marshall and others, to be read in evidence in a certain suit in chancery, depending in the Jeffer-

son Circuit Court, in which I, as executor of John Thruston, deceased, am complainant, and you and others are defendants; and take notice also, that on the sixth day of the same month, 1823, at the office of Thruston and Hawes, in Louisville, Kentucky, I shall the deposition of Worden Pope and others, to be read as evidence in suit aforesaid.

Yours, &c.

EDMD. H. TAYLOR, *Ex'r of*
JNO. THRUSTON, *deceased.*

I acknowledge the service of the above for myself and wife. March 31st, 1823.

JAMES A. PEARCE.

I acknowledge the service of the within. May 30, 1823.

TEMPLE GWATHMEY.

Temple Gwathmey, Peter Priest, and Lucy, his wife, Mrs. Frances Jones and Mrs. Frances Fitzhugh:

Take notice, that on the 3rd day of June next, at the house of Humphrey Marshall, in the town of Frankfort, I shall take the deposition said Marshall and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson Circuit Court, in which I, as executor of John Thruston, deceased, am complainant, and you and others are defendants; and also take notice, that on the 6th day of the same month, (1823,) I shall, at the office of Thruston and Hawes, in Louisville, Kentucky, take the deposition of Worden Pope and others, to be read as evidence in the suit aforesaid.

EDMUND H. TAYLOR, *Ex'r of*
JOHN THRUSTON, *deceased.*

March 11, 1823.

Came to hand, April 16, 1823, and executed same day, by delivering to Peter Priest and Lucy, his wife, Mrs. Frances Fitzhugh and Mrs. Fanny Jones, true copy of this notice. April 16, 1823.

MILTON BUCKNER, *D. S.*
For T. BUCKNER, *S. J. C.*

Mr. George Clarke:

Take notice, that on the 3d day of June next, at the house of Humphrey Marshall, Esq., in the town of Frankfort, Kentucky, I shall the deposition of said Marshall and others, to be read as evidence in a suit in chancery, depending in the Jefferson Circuit Court, in which I, as executor of John Thruston, deceased, am complainant, and you and others are defendants; and also take no-

tice, that on the 6 day of June next, at the office of Thruston and Hawes, in the town of Louisville, Kentucky, I shall take the deposition of Worden Pope and others, to be read as evidence in the suit aforesaid.

Yours respect'y, &c.,
EDMUND H. TAYLOR, *Ex'r of*
JOHN THRUSTON, *deceased.*

Executed April 5, 1823, by the delivery of a true copy of the within notice to George W. Clark.

J. C. RICHARDSON, Jr. *S. F. C.*

Benjamin Temple and Eleanor, his wife:

Take notice, that on the 28 day of May, 1824, at the house of Humphrey Marshall, in the town of Frankfort, Kentucky, I shall take his, said Marshall's deposition, and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson Circuit Court, in which said suit I, as executor of John Thruston, deceased, am complainant, and you and others are defendants; and on the next day, at the Mansion House tavern, in the town of Frankfort, I shall take the deposition of Charles S. Todd and others, to be read as evidence in the suit aforesaid; and I shall continue at the last mentioned place, from day to day, (Sundays excepted,) until said depositions are taken; and on the 3d day of June, 1824, at the office of Thruston and Richardson, in Louisville, Kentucky, I shall take the deposition of John Howard and others, to be read as evidence in the suit aforesaid; and I shall continue at the last mentioned place from day to day (Sundays excepted) until said depositions are taken.

Yours, &c.,
EDMUND H. TAYLOR, *Ex'r of*
JOHN THRUSTON, *deceased.*

May 6, 1824.

I acknowledge that Samuel Owens, D. S., for D. W. Poor, S. L. C., delivered to me two copies of the above notice; one for me, and the other for my wife, 12th day of May, 1824.

BENJA. TEMPLE.

Executed by delivering Mr. Benjamin Temple a copy of the within notice to him, and also one copy for his wife, which he has acknowledged on the within notice.

SAML. OWENS, *D. S.*
For D. W. POOR, *S. L. C.*

May the 12th, 1824.

MRS. LUCY CROGHAN:

Take notice, that on the 3d day of June next, at the house of Humphrey Marshall, Esq., in the town of Frankfort, Kentucky, I shall take the deposition of said Marshall and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson Circuit Ccurt, in which I, as executor of John Thruston, dec'd, am complainant, and you and others are defendants; and also take notice, that on the 6th day of the same month, 1823, at the office of Thruston and Hawes, in Louisville, Kentucky, I shall take the deposition of Worden Pope and others, to be read as evidence in the suit aforesaid. Resp'y, &c.

EDM'D H. TAYLOR,
Ex'or. of Jno. Thruston, dec'd.

March 31, 1823.

Came to hand the 10th of April, 1823, and delivered a true copy of the within notice to Lucy Croghan, the same day.

MILTON BUCKNER, *D. S.*
For THO. BUCKNER, *S. J. C.*

To William Clark and John Gwathmey:

Take notice, that on the third day of June next, at the house of Humphrey Marshall, Esq., in the town of Frankfort, Kentucky, I shall take the deposition of said Marshall and others, to be read as evidence in a certain suit in chancery, depending and undetermined in the Jefferson Circuit Court, in which I, as executor of John Thruston, am complainant, and you and others are defendants; and also take notice, that on the sixth day of the same month, at the office of Thruston and Hawes, in Louisville, Kentucky, I shall take the deposition of Worden Pope and others, to re read as evidence in the suit aforesaid. Yours, &c.

EDMUND H. TAYLOR,
Ex'r. of John Thruston, dec'd.

April 23, 1823.

JEFFERSON COUNTY, *ss.*

This day, Shadrach Penn, jr., as editor and publisher of the Louisville Public Advertiser, came personally before the undersigned, and made oath that the annexed notice for taking the deposition of H. Marshall and Worden Pope, was published four weeks (weekly) in the newspaper aforesaid, commencing on the 23d April, 1823, and ending in May following.

Given under my hand at Louisville, the 14th June, 1824.

MATHEW LOVE, *J. P. J. C.*

Temple Gwathmey, Peter Priest, and Lucy, his wife, and Mrs. Frances Jones, and Mrs. Frances Fitzhugh, and H. H. Booth, by his guardian ad litem, William H. Booth:

Take notice, that on the third day of June next, at the house of Humphrey Marshall, in the town of Frankfort, Kentucky, I shall take the deposition of said Marshall and others, to be read as evidence in a certain suit in chancery depending in the Jefferson Circuit Court, in which I, as executor of John Thruston, dec'd, am complainant, and you and others are defendants. And, also, take notice, that on the 6th day of the same month (1823,) I shall, at the office of Thruston and Hawes, in Louisville, Kentucky, take the deposition of Worden Pope and others, to be read as evidence in the suit aforesaid. March 31st, 1823.

EDMUND H. TAYLOR,
Ex'r of John Thruston, deceased.

I acknowledge the service of a copy of this notice for H. H. Booth, as his father and guardian ad litem, in the within named suit.

W. H. BOOTH.

April 8th, 1823, (1823.)

To William Clark and John Gwathmey:

Take notice, that on the 3d day of June next, at the house of Humphrey Marshall, Esqr., in town of Frankfort, Kentucky, I shall take the deposition of said Marshall and others, to be read as evidence in a certain suit in chancery depending and undetermined in the Jefferson Circuit Court, in which I, as executor of John Thruston, am complainant, and you and others are defendants. And also take notice, that on the sixth day of the same month, at the office of Thruston and Hawes, in Louisville, Kentucky, I shall take the deposition of Worden Pope and others, to be read as evidence in the suit aforesaid.

Yours, &c.,
EDMUND H. TAYLOR,
Ex'r of John Thruston, deceased.

April 23, 1823.

This is to certify, that the annexed notice for taking the depositions of Humphrey Marshall and others, has been published four weeks in the Louisville Public Advertiser, commencing on the 23d April, and ending on the 23d May.

Given under my hand, this 26th June, 1823.

S. PENN, Jr.,
Printer and Publisher.

To Gen'l William Clark, Doct. William Clark, John Gwathmey, Samuel Gwathmey, Richard C. Anderson, Jr., and Elizabeth, his wife:

Take notice, that on the 14th day of January next, at the Mansion House tavern, in the town of Frankfort, Kentucky, kept by Col. Richard Taylor, I shall take the depositions of Humphrey Marshall, Esq., and others, to be read as evidence in a certain suit in chancery depending in the Jefferson Circuit Court, in Kentucky, where I am complainant, as executor of John Thruston, dec'd, and you and others are defendants. And also take notice, that I shall continue from day to day (Sundays excepted,) at the same place, until said depositions are taken. And also take notice, that on the 17th day of the same month, 1824, I shall, at the tavern of Archibald Allen, in Louisville, Kentucky, take the deposition of John Howard, James Hughes, Owen Gwathmey, Col. Richard C. Anderson and others, to be read as evidence in the suit aforesaid; and I shall continue at the same place from day to day, (Sundays excepted,) until said depositions are taken.

Respectfully, &c.,

EDMUND H. TAYLOR,
Ex'r of John Thruston, dec'd.

Dec. 2d.

STATE OF KENTUCKY, *Jefferson County, sct:*

This day came Brooke Hill, one of the late publishers and proprietors of the Morning Post, a legally authorised newspaper, and made oath that the notice hereto annexed was published in s'd Morning Post for four weeks, commencing on the 2d Dec'r, 1823.

Given under my hand and seal, this 12th day of June, 1824.

[L. S.]

WM. FIELD,
Justice of the Peace in and for Jefferson County.

Gen'l William Clark, or Messrs. Denny and Nicholas, his attorneys at law:

Take notice, that on the 14 day of the present month, (January,) at the Mansion House tavern, in the town of Frankfort, Kentucky, I shall take the depositions of Humphrey Marshall and others, to be read as evidence in a certain suit in chancery depending in the Jefferson Circuit Court, in which suit I, as executor of John Thruston, deceased, am complainant, and you and others are defendants; and I shall continue at the same place (Sunday excepted) from day to day, until said depositions are taken; and also take notice, that on the 17 day of the same month, at the tavern of Archibald Allen, in the town of Louisville, Kentucky, I shall take the deposition of John Howard, James Hughes, Owen Gwathmey, Col. Richard C.

Anderson and others, to be read as evidence in the suit aforesaid; and I shall continue at the same place from to day, (Sundays excepted,) until said depositions are taken.

Resp'y, &c.

EDMUND H. TAYLOR, *Ex'r of*
Jan. 6, 1824. JOHN THRUSTON, *dec'd.*

10 January, 1824, rec'd a copy of this notice.

DENNY & NICHOLAS, *Atto. for*
WILLIAM CLARK.

George Woolfolk and Catharine, his wife:

Take notice, that on the 14 day of January next, at the Mansion House tavern, in the town of Frankfort, Kentucky, I shall t ke the deposition of Humphrey Marshall, Esq. and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson Circuit Court, in which I, as executor of John Thruston, dec'd, am complainant, and you and others are defendants; and I shall continue at the same place, from day to day, (Sundays excepted,) until said depositions are taken; and also take notice, that on the 17th day of the same month, at the tavern of Archibald Allen, in Louisville, Kentucky, I shall take the deposition of John Howard, James Hughes, Owen Gwathmey and Col. Richard C. Anderson and others, to be read as evidence in the suit aforesaid; and I shall continue at the same place, from day to day, (Sundays excepted,) until said depositions are taken.

Resp'y, &c.

EDMUND H. TAYLOR, *Ex'r of*
JOHN THRUSTON, *dec'd.*

A copy of this notice was this day presented to us.

G. WOOLFOLK,
26th Dec., 1823. C. T. WOOLFOLK.

MISS CECELIA ANDERSON:

Take notice, that on the 14 day of this month, at the Mansion House tavern in the town of Frankfort, Kentucky, I shall take the depositions of Humphrey Marshall & others, to be read as evidence in a certain suit in chancery depending in the Jefferson Circuit Court, in which suit I, as ex'or of John Thruston, dec'd, am complainant, and you and others are defen'ts; and I shall continue at the same place, from day to day (Sundays excepted,) until said depositions are taken; and also take notice, that on the 17th day of the same month, at the tavern of Archibald Allen, in Louisville, Kentucky, I shall take the depositions of John Howard, James Hughes, Owen Gwathmey, Col. Richard C. Anderson and others, to be read as evidence in the suit aforesaid; and I shall continue, from day to day,

(Sundays excepted,) at the same place until s'd depositions are taken.

Resp'y, &c.

EDMUND H. TAYLOR, *Ex'r of* JOHN THRUSTON, *dec'd.*

Jan'y 8th, 1824.

Deliv'd a copy on the 8th Jan'y, 1824.

JEFFERSON COUNTY, *sct:*

This day, Alex. M. Fontaine came in his proper before the undersigned, a justice of the peace for the county , made oath that on the 8th day of January, 1824, he delivered to Col. Richard C. Anderson, for Miss Cecelia Anderson, with whom she lives, and at his house, a true copy of this notice.

Given under my hand as justice of the peace for the afs'd this 10 January, 1824.

WM. FIELD, *J. P. J. C.*

John Logan and Nancy, his wife:

Take notice, that on the 14 day of January next, at the Mansion House tavern, in the town of Frankfort, Kentucky, I shall take the deposition of Humphrey Marshall, Esq. and others, to read as evidence in a certain suit in chancery depending in the Jefferson Circuit Court, in which I, as executor of John Thruston, dec'd, am compl't, you and others are def'ts; and also take notice, that I shall continue at the same place, from day to day, (Sundays excepted,) until said depositions are taken; and also take notice, that on the 17 day of the same month, at the tavern of Archibald Allen, in Louisville, Kentucky, I shall take the depositions of John Howard, James Hughes, Owen Gwathmey, Col. Richard C. Anderson and others, to be read as evidence in the suit afs'd; and I shall continue at the same place, from day to day, (Sundays excepted,) until said depositions are taken.

Respectfully, &c.

EDMUND H. TAYLOR, *Ex'r of* JOHN THRUSTON, *dec'd.*

I acknowledge the service of the above for myself and wife.
Dec. 25th, 1823. JOHN LOGAN.

Isaac R. Gwathmey and Elizabeth, his wife, and George C. Gwathmey:

Take notice, that on the 14 day of Jan'y next, at the Mansion House tavern in Frankfort, Kentucky, I shall take the deposition of Humphrey Marshall, Esq., and others, to be read as evidence in a

suit in chancery depending in the Jefferson Circuit Court, in which I, as executor of John Thruston, dec'd, am complainant, and you and others are defendants; and I continue at the same place from day to day, (Sundays excepted,) until s'd depositions are taken; and on the 17th day of the same month, at the tavern of Archibald Allen, in the town of Louisville, Kentucky, I shall take the depositions of John Howard, James Hughes, Owen Gwathmey and Col. Richard C. Anderson and others, to be read as evidence in the suit afs'd; and I shall continue at the same place, from day to day, (Sundays excepted,) until said depositions are taken.

Resp'y, &c.

EDMUND H. TAYLOR, *Ex'r of*
JOHN THRUSTON, *dec'd.*

I acknowledge the service of the within notice for myself and wife.

ISAAC R. GWATHMEY.

Dec. 26, 1823.

I acknowledge the reception and service of a copy of the within notice.

GEO. C. GWATHMEY.

Dec. 26, 1823.

GEO. C. GWATHMEY, Esq.:

Take notice, that on the 14 day of the present month, at the Mansion House tavern in the town of Frankfort, Kentucky, I shall take the depositions of Humphrey Marshall and others, to be read as evidence in a certain suit in chancery depending in the Jefferson Circuit Court, in which suit I, as executor of John Thruston, dec'd, am complainant, and you and others are defendants; and I shall continue, at the same place, from day to day, (Sundays excepted,) until said depositions are taken; and also take notice, that on the 17th day of the same month, at the tavern of Archibald Allen, in the town of Louisville, Kentucky, I shall take the depositions of John Howard, James Hughes, Owen Gwathmey, Col. Richard C. Anderson and others, to be read as evidence in the suit afs'd; and I shall continue at the same place, from day to day, (Sundays excepted,) until said depositions are taken.

Resp'y, &c.

EDMUND H. TAYLOR, *Ex'r of*
Jan. 8, 1824. JOHN THRUSTON, *dec'd.*

I acknowledge to have rec'd a copy of the notice.

Jan. 9th, 1824. GEO. C. GWATHMEY.

MRS. LUCY CROGHAN:

Take notice, that on the 14 day of January, instant, at the Ma n-

sion House tavern, in the town of Frankfort, Kentucky, I shall take the deposition of Humphrey Marshall and others, to be read as evidence in a certain suit in chancery depending in the Jefferson Circuit Court, in which said suit I, as executor of John Thruston, dec'd, am complainant, and you and others are defendants; and I shall continue at the same place from day to day, (Sundays excepted,) until said depositions are taken; and also take notice, that on the 17 day of the same month, at the tavern of Archibald Allen, in the town of Louisville, Kentucky, I shall take the depositions of John Howard, James *Hewes*, Owen Gwathmey, Col. Richard C. Anderson and others, to be read as evidence in the suit aforesaid; and I shall continue at the same place from day to day, (Sundays excepted) until said depositions are taken.

Resp'y, &c.

EDMUND H. TAYLOR, *Ex'r of*
JOHN THRUSTON, *dec'd.*

Jan'y 6, 1824.

Deliv'd a copy on the 8 Jan'y, 1824.

JEFFERSON COUNTY, *sct.*

This day, Alexander M. Fontaine came in his proper person before the undersigned, a justice of the peace for the aforesaid county, and made oath that on the 8th day of January, 1824, at the residence of Mrs. Lucy Croghan, he deliv'd to her for Mr. John Croghan, a member of her family, and over sixteen years of age, a true copy of this notice.

Given under my hand this 10th January, 1824.

WM. FIELD, *J. P. J. C.*

Mrs. FRANCES FITZHUGH:

Take notice, that on the 14 instant, at the Mansion House tavern, in the town of Frankfort, Kentucky, I shall take the deposition of Humphrey Marshall, Esq., and others, to be read as evidence in a certain suit in chancery depending in the Jefferson Circuit Court, in which said suit I, as executor of John Thruston, deceased, am complainant, and you and others are defendants; and I shall continue at the same place, from day to day, (Sundays excepted,) until said depositions are taken; and also take notice, that on the 17 day of the same month, at the tavern of Archibald Allen, in the town of Louisville, Kentucky, I shall take the depositions of John Howard, James Hughes, Owen Gwathmey, Col. Rich. C. Anderson and others, to be read as evidence in the suit aforesaid; and I shall con-

tinue at the same place from day to day, (Sundays excepted,) until said depositions are taken.

Yours, &c.

EDMUND H. TAYLOR, *Ex'r of*
JOHN THRUSTON, *dec'd.*

A. M. FONTAINE.

Jan'y 5th, 1824.

JEFFERSON COUNTY.

Alexander M. Fontaine came in his proper person before the undersigned, a justice of the peace for the county aforesaid, and made oath that on this day he delivered to Mrs. F. Fitzhugh a true copy of the within notice.

Given under my hand this 10 January, 1824.

WM. FIELD, *J. P. J. C.*

Mrs. Frances Jones and William H. Boothe, James A. Pierce, and Nancy his wife, and Isaac Clark.

Take notice, that on the 14th day of the present month, at the Mansion House tavern, in the town of Frankfort, Kentucky, I shall take the deposition of Humphrey Marshall and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson Circuit Court, in which said suit I, as ex'r of John Thruston, dec'd, am complainant, and you and others are defendants; and I shall continue, at the same place, from day to day, (Sundays excepted,) until said depositions are taken; and also take notice, that on the 17th day of the same month, at the tavern of Archibald Allen, in the town of Louisville, Kentucky, I shall take the depositions of John Howard, James Hughes, Owen Gwathmey, Colonel Richard C. Anderson and others, to be read as evidence in the suit afs'd; and I shall continue at the same place from day to day, (Sundays excepted,) until said depositions are taken.

Respectfully, &c.

EDMUND H. TAYLOR, *Ex'r of*
JNO. THRUSTON, *dec'd.*

A. M. FONTAINE.

JEFFERSON COUNTY, *sct.*

This day, Alexander M. Fontaine came in his proper person, before the undersigned, a justice of the peace for the county af'sd, and made oath, that on this day he deliv'd to William H. Boothe, Isaac Clark and James A. Pearce, and one for his wife *wife*, true copy of this notice.

Given under my hand, this 10th January, 1824.

WM. FIELD, *J. P. J. C.*

TEMPLE GWATHMEY, Esq:

Take notice, that on the 14th day of January next, at the Mansion House tavern, in the town of Frankfort, Kentucky, I shall take the deposition of Humphrey Marshall and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson Circuit Court in Kentucky, in which suit I, as executor of John Thruston, deceased, am complainant, and you and others are defendants; and I shall continue at the same place from day to day, (Sundays excepted,) until said depositions are taken; and also take notice, that on the 17th day of the same month, at the tavern of Archibald Allen, in the town of Louisville, Jefferson county, Kentucky, I shall take the depositions of John Howard, James Hughes, Owen Gwathmey, Col. Rich'd C. Anderson and others, to be read as evidence in the suit af'sd; and I shall continue at the same place from day to day, (Sundays excepted,) until said depositions are taken.

Resp'y, &c.
EDMUND H. TAYLOR,
Ex'r of John Thruston, dec'd.

Dec'r 30, 1823.

I acknowledge the service of a copy of the above notice.
TEMPLE GWATHMEY.

Dec'r 31st, 1823.

To Peter Priest and Lucy, his wife:

Take notice, that on the 14th day of January, 1824, at the Mansion House tavern, in the town of Frankfort, Kentucky, kept by Col. Rich'd Taylor, I shall take the depositions of Humphrey Marshall, Esqr., and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson Circuit Court, Kentucky, in which said suit I, as executor of John Thruston, dec'd, am complainant, and you and others are defendants; and I shall continue at the same place from day to day, (Sundays excepted,) until said depositions are taken; and also take notice, that on the 17th day of the same month, at the tavern of Archibald Allen, in the town of Louisville, Kentucky, I shall take the depositions of John Howard, James Hughes, Owen Gwathmey, Colo. Rich'd C. Anderson and others, to be read as evidence in the suit aforesaid; and I shall continue at the same place from day to day, (Sundays excepted,) until said depositions are taken.

Resp'y, &c.
EDMUND H. TAYLOR,
Ex'r of John Thruston, dec'd.

Dec'r 5th, 1823.

JEFFERSON COUNTY, *sct.*

This day, Alexander M. Fontaine came in his proper person, before the undersigned, a justice of the peace for the county aforesaid, and made oath, that on the 9th day of January, 1824, he delivered to Mr. P. Priest and his wife true copy of the within notice.

Given under my hand, this 10th day of January, 1824.

WM. FIELD, *J. P. J. C.*

Benjamin Temple and Eleanor E., his wife, George W. Clarke, Isaac R. Gwathmey and Elizabeth, his wife, John Logan and Nancy, his wife, George Woolfolk and Catharine, his wife, and Mrs. Frances Jones—Take notice, that on the 1st Thursday in April, 1824, at the house of Humphrey Marshall, in the town of Frankfort, Kentucky, I shall take the depositions of said Marshall and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson Circuit Court, in Kentucky, in which said suit I, as executor of John Thruston, dec'd, am complainant, and you and others are defendants; and if not taken on that day, I shall attend at said Marshall's house, on the 1st Friday of the same month, to take his s'd deposition and others; and on the 1st Saturday in the same month, at the tavern of Daniel Weisiger, in the s'd town of Frankfort, I shall take the deposition of John H. Todd and others, to be read as evidence in the suit af'sd; and on the third Thursday of the same month, at the office of Ch's M. Thruston, in the town of Louisville, Kentucky, I shall take the deposition of Henry Hurst, Oliver, William C. Galt, James Hughes and others, to be read as evidence in the suit aforesaid; and I shall continue at the last mentioned from day to day, (Sundays excepted,) until said depositions are taken.

Resp'y, &c.,

EDMUND H. TAYLOR,

Ex'r of John Thruston, dec'd.

Feb'y 24, 1824.

Executed March 17, 1824, by the delivery of a true copy of the within notice to George W. Clark; the other parties herein named, are no inhabitants of Fayette county.

J. C. RICHARDSON,

D. S. for Jas. Woods, Sh'ff.

Fee paid.

To Mrs. Dianah Bullitt, George C. Gwathmey, Miss Cecelia Anderson, William H. Boothe, James A. Pearce and Nancy, his wife, Isaac Clark, Mrs. Lucy Croghan, Peter Priest and Lucy, his wife, Mrs. Fanny Fitzhugh.

Take notice, that on the 28th day of this month, at the Mansion

House tavern, in the town of Frankfort, Kentucky, I shall take the deposition of Col. Ch's S. Todd and others, to be read as evidence in a certain suit in chancery, depending in the Jefferson Circuit Court, in which suit I, as executor of John Thruston, deceased, and you and others are defendants. And I shall continue at the last mentioned place from day to day, (Sundays excepted,) until said depositions are taken. And on the third day of June, 1824, at the office of Thruston & Richardson, in the town of Louisville, Kentucky, I shall take the depositions of John Howard and others, to be read as evidence in the suit aforesaid; and I shall continue at the last mentioned place from day to day, (Sundays excepted,) until said depositions are taken.

Yours, &c.

EDMUND H. TAYLOR,
Ex'r of John Thruston, dec'd.

May 21, 1824.

Executed by delivering a true copy of the within notice, to Lucy *Grogham*, Peter Priest and Lucy, his wife, and Cecelia Anderson, this 24th May, 1824; and on the 25th same month, to James A. Pearce and Nancy, his wife, Jacob Clark, W. H. Boothe, Dianah Bullitt, George C. Gwathmey and Fanny Fitzhugh.

IRA PARKS, *C. J. C.*

I, Worden Pope, husband of the late Elizabeth T. Thruston, one of the daughters and distributees of John Thruston, dec'd, do hereby release to Edm'd H. Taylor, executor of the testament and last will of the said John Thruston, (for the benefit, interest and advantage of Charles M. Thruston, without any recourse,) all the right, title and interest of myself and the said Elizabeth, my wife, of, in and to a debt due and claimed by the said Taylor, executor as af'sd, under a mortgage given to the said John Thruston by George R. Clark, and upon which a suit in chancery is now depending in the Jefferson Circuit Court, in the State of Kentucky, in the name of said Taylor, executor as af'sd, against William Clark and others. And I do hereby disclaim (in favour of the said Charles M. Thruston,) all claim to the s'd debt and mortgage.

Witness my hand and seal, this 6th day of June, 1823.

WORDEN POPE. [L. S.]

"The deposition of Worden Pope, taken at the office of Thruston & Hawes, in the town of Louisville, in the county of Jefferson, and State of Kentucky, on behalf of the complainant, to be read as evidence in a suit in chancery, now depending in the Jefferson Circuit Court, in the State of Kentucky, between Edmund H. Taylor, executor of the testament and last will of John Thruston, deceased, complainant, and William Clark and others, defendants.

"The deponent being of lawful age, and first duly sworn, deposes

and says, that he, at the request of the said William Clark, carried a deed to the clerk's office of the Court of Appeals of Kentucky, to be recorded, from George R. Clark to the said William Clark, for two tracts of land below the Tennessee river, in Kentucky; that he, as a witness to the said deed, proved the same before the clerk of the said court; that said Pope was then on his way to Lexington, and on his return to Frankfort, found that Humphrey Marshall, Esq., had entered a protest in the said office against the said deed; and that he believes that the papers made part hereof, marked W C and H M, are copies of the said deed and protest, and referred to for greater certainty.

"The deponent states, that the said William Clark told this deponent, that the said deed was made to him by the said George R. Clark, in order to bring the said Marshall to terms, in relation to the contract which the said Marshall had from the said G. R. Clark, for the land conveyed by the said deed, or to obtain a vacation of the said contract; that such was the object of the said William Clark, as declared by him concerning the said deed, the deponent is certain and positive.

"This deponent further deposes and says, that at the request of Dennis Fitzhugh, he drew a deed from the said William Clark, and the surviving brothers and sisters of the said G. R. Clark, dec'd, and the representatives of those who were dead—a deed for s'd land to Charles S. Todd, Esqr., which was not finally executed, and the contract vacated; and that in the course of the execution of the said deed, the acknowledgment of which was made by many of the parties who were heirs of the said George R. Clark; and that this deponent distinctly understood that all the parties, say the heirs of the said George R. Clark, were acknowledged to have a part or share in the lands conveyed by said deed as heirs of the said George R. Clark, and the said William Clark admitted the right thereto, under a memorandum or writing of the said G. R. Clark, or of the said William Clark to him. The deponent is positively certain that all the persons who signed and executed the said deed, claimed the land aforesaid, as the heirs of the said G. R. Clark.

"The deponent further states, that he believes that the said land was sold to the said Todd for upwards of thirty thousand dollars, the amount of which the deponent can't recollect. He also states, that the said G. R. Clark conveyed several tracts of land to the said William Clark, lying in the Illinois grant, in the State of Indiana; and that the deponent believed that said lands were conveyed to prevent them from being sold under a judgment for a large sum, recovered by one Bazardon, against the said G. R. Clark.

"The deponent further states, that the said William Clark was, as the deponent believes, the only surviving brother of the said G. R. Clark, dec'd, at the time of his death; that Mrs. Lucy Croghan, and Mrs. Fanny Fitzhugh, are the sisters of the said G. R. Clark;

that Mrs. Ann Gwathmey, dec'd, late wife of Owen Gwathmey, was one of the sisters of the said G. R. Clark, and died after him, leaving the following children and grand-children, viz: John Gwathmey, Temple Gwathmey, Samuel Gwathmey, Isaac R. Gwathmey, Diana M. Bullitt, wife of Thomas Bullitt, Mrs. Frances Jones, Lucy Priest, wife of Peter Priest, Catharine Woolfolk, wife of Geo. Woolfolk, Mrs. Elizabeth C. Anderson, wife of Rich'd C. Anderson, Jr., George C. Gwathmey, and William Boothe, son of Ann C. Boothe, deceased, late wife of William H. Boothe; that Mrs. Anderson, dec'd, late wife of Col. Richard C. Anderson, was also a sister of the said George *C.* Clark, and died before him, leaving the following named children, to wit: Richard C. Anderson, Jr., Nancy Logan, wife of John Logan, Elizabeth Gwathmey, wife of Isaac R. Gwathmey, and Cecelia Anderson; and that Jonathan Clark was also a brother of the said George R. Clark, and died before him, leaving the following children, viz: John Clark, Isaac Clark, William Clark, George W. Clark, Eleanor E. Temple, wife of Benjamin Temple, and Ann Pearce, wife of James A. Pearce; and that the said John H. Clark died unmarried and intestate, after the death of the said Jonathan Clark and G. R. Clark; and further the deponent saith not.

WORDEN POPE.

The said deponent, Worden Pope, further deposes and says, that the release which precedes his foregoing deposition in five pages, this included, is his act and deed; that at the taking of his said deposition he had no interest, direct or contingent, in the event of the suit therein mentioned, and is not to receive any part of the money or other thing which shall be recovered in the said suit; nor am I, the deponent, to be responsible in any way, in consequence of the said release; and further the deponent saith not.

WORDEN POPE.

Worden Pope, whose deposition is given and contained in the foregoing five pages, (this included) is not to be responsible to me or my heirs, in any way, in consequence of the release above set forth, to Edm'd H. Taylor, for my benefit.

Witness my hand and seal, this 6th day of June, 1823.

CHS. M. THRUSTON, [L. S.]

JEFFERSON COUNTY, *sct.*

I, William Tompkins, a Justice of the Peace, for the county aforesaid, do hereby certify that the foregoing deposition of Worden Pope was this day taken, subscribed and sworn to before me, at the office of Thruston and Hawes, on this day.

Witness my hand, this 6th day of June, 1823.

WM. TOMPKINS, *J. P. J. C.*

This indenture, made this 25th day of July, one thousand eight hundred and three, between George Rogers Clark, of the County of Jefferson, and the Commonwealth of Kentucky, of the one part, and William Clark, of the said county and State, of the other part, witnesseth: that the said George Rogers, for and in consideration of the sum of twenty-one hundred dollars (sundry services by the said William) to him in hand paid by the said William, the receipt whereof he doth hereby acknowledge. He, the said George Rogers hath granted, bargained, and sold, and by these presents do hereby grant, bargain, sell, alien and confirm unto the said William, his heirs and assigns forever, two certain tracts or parcels of land, containing seventy-three thousand nine hundred and sixty-two acres, more or less, situated, lying and being in the County of Livingston on the Ohio, below the Tennessee river, and bounded as follows, to wit: Beginning at three maples, two ashes and a hackberry on the bank of the Ohio at the mouth of Tennessee river, running from thence south sixteen degrees, west one thousand two hundred and eighty poles, crossing a creek at two white oaks and three maples, standing on the bank of the creek that empties into the Ohio, at the lower end of the Island, at the mouth of Tennessee; thence north seventy-four degrees, west five thousand five hundred and ninety-eight poles, crossing a fork of Massac creek, at 1,830 poles, another at 2,340 poles, a branch at 3,000 poles and another at 3,396 poles, passing a corner, five black oak saplings in the head of a hollow at three thousand eight hundred and forty poles, to a white oak and *hickerby*, a small drain, corner, to George Smith, running from thence with his line north fifty-eight degrees, west two thousand one hundred and sixty-six poles, to two maples and a cotton wood tree standing on the river at the lower side of a small creek, and the fifth below Massac; running from thence up the Ohio, binding thereon, eight thousand six hundred and forty poles to the beginning. To have and to hold the said tract or parcel of land unto the said William Clark, his and assigns, to his and their only proper use and behoof. And the said George Rogers Clark for himself and his heirs, the said two tracts or parcels of land, unto the said William Clark, his heirs and assigns, shall and will warrant and forever defend against the claim of him and his heirs, and all other person or persons claiming by, from or under him or them, except the part deeded to Levi Hollingsworth, and Harry Innis, &c.; and the said George Rogers Clark, for himself and his heirs, doth covenant to and with the said William Clark, his heirs and assigns, that in case any part of the said tract or tracts of land shall be lost by other that then he, the said George Rogers Clarke, will refund so much of the purchase money as will be in the same proportion given for any part that may be lost.

In testimony whereof, the said George Rogers Clark hath here-

unto set his hand and seal, the day and year before written. (An interlineation in the 31st line.)

Witness, G. R. CLARK, [L. S.]

Signed, sealed and delivered in presence of

ROBERT K. MOORE,	CHARLES ANDERSON,
ISAAC ROBERTSON,	WORDEN POPE,
COLBY TAYLOR,	ANTHONY REYNOLDS,
W. AKIN,	GEORGE POPE,
GEORGE WILSON,	EDWARD DENNY.

STATE OF KENTUCKY, *sct.*

I, Achilles Sneed, clerk of the Court of Appeals of the State aforesaid, being duly authorised by law to receive, admit and record deeds and other writings in my office, do hereby certify that the foregoing deed was produced to me in my office in Frankford, on the 12th day of November, 1803, and proved by the oath of Worden Pope, and on the 17th day of the same month, was further proved by the oath of George Wilson, and on the 28th day of the same month aforesaid, was further and fully proved by the oath of William Akin, being three of the subscribing witnesses thereto, to be the act and deed of the said George Rogers Clark, the grantor therein named, and that the same is truly recorded.

In testimony whereof I have hereunto subscribed my name, the day and year last aforesaid.

ACHILLES SNEED, *C. C. A.*

A copy—attest: A. G. BONDURANT, *D. C.*

For ACHILLES SNEED, *C. C. A.*

Having seen a deed of conveyance from George Rogers Clark to William Clark, for two tracts of land, containing 73,962 acres, more or less, situated in the county of Livingston on the Ohio, the Tennessee, and bounded as in the said deed, bearing date the 28th day of July, 1803, is described. I do hereby protest against the said deed as being illegal and fraudulent; because the said G. R. Clark stands bound to me, by solemn contract entered into prior to the date of the said deed, to convey to me the said two tracts of land, and because there is now, and long hath been a suit in chancery depending in the Federal Court for the District of Kentucky, by Robert Morris as my assignee, complt., against the said G. R. Clark, to compel a specific execution of the said contract.

Given under my hand and seal, this 12th day of November, 1803.

H. MARSHALL, [L. S.]

STATE OF KENTUCKY, *sct.*

I, Achilles Sneed, clerk of the Court of Appeals for the State aforesaid, being duly authorised by law to receive and admit to record, deeds and other writings in my office, do hereby certify that the foregoing instrument of writing was produced to me in my office in Frankfort, on the 12th day of November, one thousand eight hundred and three, and acknowledged by Humphrey Marshall to be his act and deed, and that the same is truly recorded.

In testimony whereof, I have hereto subscribed my name, the day and year aforesaid.

ACHILLES SNEED, *C. C. A.*

A copy—att: A. G. BONDURANT, *D. C.*
For ACHILLES SNEED, *C. C. A.*

Isaac Shelby, Esq., Governor of the Commonwealth of Kentucky, to all whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of twenty-five land office treasury warrants, No. 1,307, 1,308, 1,309, 1,310, 1,311, 1,312, 1,314, 1,315, 1,316, 1,817, 1,818, 1,819, 1,820, 1,821, 1,822, 1,823, 1,824, 1,825, 1,827, 1,828, 1,829, 1,830, 1,831, 1,832, 1,833 1,834 & 1,835, there is granted by the said Commonwealth unto Brig. Gen. George Rogers Clark, a certain tract or parcel of land, containing thirty-seven thousand acres, by survey bearing date the 8th day of June, 1784, lying and being in Lincoln County and on the Ohio, and bounded as follows, to wit: Beginning at a black walnut, elm and hoopwood, standing on the bank of the Ohio, and corner to his former survey of 36,962 acres, running from thence down with the several meanders of the Ohio; N. 55 W. 104 poles, N. 70 W. 194 poles, N. 56 W. 126 poles, N. 70 W. 320 poles, N. 65 W. 88 poles, N. 75 W. 224 poles, N. 70 W. 450 poles, N. 80 W. 704 poles, N. 85 W. 80 poles, N. 81 W. 236 poles, west 290 poles, S. 85 west 160 poles, S. 77 W. 320 poles, S. 70 W. 210 poles, S. 55 W. 320 poles, S. 40 W. 534 poles, to two maples and a cottonwood tree standing at the lower side of a small creek and the fifth below Massac Fort and creek, and corner to George Smith's survey; from thence with his line S. 58 E. 2,166 poles to his corner of a white oak and hickory, by a small drain running west; thence south 74 east 1,758 poles, to five black oak saplings, the south-west corner of his former survey; thence with his line N. 16 east 1,800 poles, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Brig'r Gen. George R. Clark, and his heirs forever.

In testimony whereof, the said Isaac Shelby, Esq., Governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said Com-
[L. S.] wealth to be affixed at Frankfort, on the fifteenth day of September, in the year of our Lord one thousand seven hundred and ninety-five, and of the Commonwealth the fourth.

By the Governor, ISAAC SHELBY.
JAMES BROWN, *Sec'y.*
A copy—test: JNO. M. FOSTER, *Reg. L. Office.*
By JAMES Y. LOVE, *D. R.*

Isaac Shelby, Esq., Governor of the Commonwealth of Kentucky, to all to whom these presents shall come, greeting:

Know ye, that by virtue and in consideration of fourteen land office treasury warrants, No. 1,294, 1,295, 1,296, 1,297, 1,298, 1,299, 1,300, 1,301, 1,302, 1,303, 1,304, 1,305, 1,306 and 1,826, there is granted by the said Commonwealth unto Brig'r Gen. George Rogers Clark, a certain tract or parcel of land, containing thirty-six thousand nine hundred and sixty-two acres by survey, bearing date the seventh day of June, 1784, lying and being in Lincoln County and on the Ohio, and bounded as followeth, to wit: Beginning at three maples, two ashes and a hackberry on the bank of the Ohio, at the mouth of the Tennessee river, running from thence S. 16 W. 1280 poles, crossing a creek to two white oaks, and three maples, standing on the bank of the creek that empties in the Ohio at the lower end of the island at the mouth of the Tennessee; thence N. 74 west 3,840 poles, crossing a fork of Massac creek at 1,830 poles, another at 2,340 poles, a branch at 3,000 poles, and another at 3,096 poles, to five black oak saplings in the head of a hollow, running north near the top of a high ridge; thence north 16 east 1,800 poles, crossing a branch of Five Mile creek and a pond to a black walnut, elm and hoopwood on the bank of the Ohio, about three miles below Fort Massac; thence running up the Ohio, with its several meanders 4,480 poles to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Brig'r Gen. George Rogers Clark and his heirs forever.

In witness whereof, the said Isaac Shelby, Esq., Governor of the Commonwealth of Kentucky, hath hereunto set his hand, and caused the seal of the said Com-
[L. S.] monwealth to be affixed at Frankfort, on the 15th day of September, in the year of our Lord one thousand seven hundred and ninety-five, and of the Commonwealth the fourth.

By the Governor, ISAAC SHELBY.
JAMES BROWN, *Sec'y.*
A copy—test: JNO. FOSTER, *R. L. O.*
By JAMES Y. LOVE, *D. R.*

June 6th, 1823.

For want of time to conclude the taking of the depositions in the foregoing case, the business was adjourned till to-morrow the 7th. Witness my hand,

W. TOMPKINS, *J. P. J. C.*

Also the deposition of William C. Galt, of lawful age, taken at the office of Thruston and Hawes, agreeably to adjournment on the 7th day of June, 1823, to be read as evidence in the suit aforesaid. The deponent being first sworn, deposes and says, that on the July, 1818, he, deponent, in conjunction with Epaphoras Jones, Thomas R. West, and Dr. J. Whitcomb, purchased of William Clark, thro' his agent, Samuel Gwathmey, one hundred acres of land, more or less, of land being lot No. 28, letter D, in Illinois, State of Indiana, for which we paid said Clark $4,500; that this land was originally patented to Gen. Geo. R. Clark: and further this deponent says not.

W. C. GALT.

"Also, the deposition of Charles W. Thruston, of lawful age, taken at the office of Thruston and Hawes, agreeably to adjournment, on this 7th day of June, 1823, to be read as evidence in the suit aforesaid. The deponent being first sworn, deposes and says, that since the death of Gen'l George Rogers Clarke, the land conveyed by the said G. R. Clarke to William Clark, as mentioned in deed marked (W. C.,) and made part of Worden Pope's deposition, being the remaining interest of the said G. R. Clark in the land contained in the patents marked G. and H., and made part of this deposition, was *deved* among the whole of the heirs of the said G. R. Clark on paper, by the said William Clark; and further this deponent saith not.

C. W. THRUSTON.

Also, the deposition of Fortunatus Cosby, of lawful age, taken at the office of Thruston and Hawes, agreeably to adjournment, on the 7th day of June, 1823, to be read as evidence in the suit aforesaid. The deponent, being first sworn, deposes and says, that previous to the death of John H. Clark, son of Jonathan Clark, and one of the heirs of George Rogers Clark, Mat, a barber then living in Louisville, and a slave, applied to this deponent to endeavor to collect or secure a debt due to him from the said John H. Clark, for monies loaned and deposited with the said John H. Clark, amounting, as he believes, to about $1800. That the said Clark promised this deponent, that he would secure the said debt, but never did during his lifetime; that after the death of the said John H. Clark, he called on Dennis Fitzhugh, Esq., who, he supposed, was acquainted with the situation of the said Clark's estate, who informed this deponent, that he believed the estate of the said

Clark would be sufficient to pay all his debts; that as one of the heirs and representatives of George Rogers Clark, he would be entitled to 2000 acres, (as he thinks,) his proportion of a large tract of land below the Tennessee river, which had been sold to Humphrey Marshall by the said G. R. Clark; and the said Marshall having failed to comply with the contract of sale, it had reverted to Gen'l G. R. Clark and descended to his heirs.

This deponent understood and believes, that the said Fitzhugh was the agent of the heirs of the said G. R. Clark, in settling and adjusting with the said Marshall his claim to the said land, and thinks he was so informed by the said Fitzhugh, which contract of purchase of the said land by Marshall has been since vacated.

This deponent states, that Charles W. Thruston, whose deposition is above written, is a first cousin of Charles W. Thruston, and a nephew of William Clark, brother of the said G. R. Clark; and further this deponent saith not.

FORT'S COSBY.

"June 7th, 1823. The depositions in the above case not being closed, the business was again adjourned till Monday, the 9th inst.

Witness my hand,

WM. TOMPKINS, *J. P. J. C.*

"Justice's fees paid for 2 day's attendance, by Charles W. Thruston, $2.

WM. TOMPKINS, *J. P. J. C.*

"Monday, 9th June, 1823. No further testimony being produced, I proceeded to close the depositions.

WM. TOMPKINS, *J. P. J. C.*

"JEFFERSON COUNTY, *sct.*

"I, William Tompkins, a Justice of the Peace for the county aforesaid, do hereby certify, that the foregoing depositions of Wm. C. Galt, Chas. W. Thruston and Fortunatus Cosby, were taken, sworn to and subscribed before me, at the office of Thruston and Hawes, on the 7th day of June, 1823.

Witness my hand and seal, this 11th day of June, 1823.

WM. TOMPKINS, *J. P. J. C.*

"The deposition of John Howard, of lawful age, taken at the tavern of Archibald Allen, in the town of Louisville, Jefferson County, Kentucky, to be read as evidence in a certain suit in chancery, depending in the Jefferson Circuit Court, in Kentucky, in which said suit Edmund H. Taylor, executor of John Thruston, dec'd, is complainant, and William Clark and others are defendants. This deponent, being first duly sworn, deposes and says,

that in the spring of the year 1801, he was at the house of the late Col. John Thruston on business, when were present Gen'l George R. Clark, Edmund H. Taylor, this deponent, and the said John Thruston; when and where this deponent was called on, and did attest a paper as a witness thereto—he presumes the mortgage, made a part of this deposition, from the said George R. Clark to the said John Thruston. The said Edmund H. Taylor also signed a paper as a witness, on the same day. This deponent distinctly recollects the act and fact of signing the said instrument by the said G. R. Clark, and the same is signed in the hand-writing of the said G. R. Clark; and further this deponent sayeth not.

The signature of John Howard to said mortgage is in the hand-writing of this deponent.

JNO. HOWARD.

17th Jan'ry, 1824.

"Adjourned at the request of Charles W. Thruston to Monday, the 19th instant, at the same place.

WM. TOMPKINS, *J. P. J. C.*

17th Jan'ry, 1824.

"JEFFERSON COUNTY, *sct.*

"I, William Tompkins, a Justice of the Peace for the county aforesaid, do hereby certify, that the foregoing deposition of John Howard was taken, subscribed and sworn to before me, at the tavern of Archibald Allen, in the town of Louisville, on the 17th day of January, 1824; and that Samuel Gwathmey, one of the defendants, was present during the time of taking said deposition.

Given under my hand, this 19th January, 1824.

WM. TOMPKINS, *J. P. J. C.*

My fee, $1, paid by Chas. M. Thruston.

WM. TOMPKINS, *J. P. J. C.*

denture undredand
past and on of the said
George Rogers Clark, for and in the sum of five hundred thirty-four pounds ⅔ lawful money, to him in hand paid by the said Thruston, at or before the sealing and delivery of these presents; the receipt whereof he, the said George Rogers Clark, doth hereby acknowledge, hath granted, bargained and sold, and by these presents doth grant, bargain and sell unto the said Thruston, his executors, administrators and assigns, the several tracts or parcels of land, to wit, 4000 acres lying on Locust creek, (Bracken County;) a moiety of 8000 acres, entered in the name of John Crittenden, and surveyed and patented to George R. Clark on a previous division with Simon Kenton, assignee, &c., &c.; 428 (or about that quantity) acres, lying on, and including the mouth of Sulpher-lick

creek, military grant, south of Green river, entered and surveyed for George Clark; 1500 acres of land, military grant, entered on a warrant issued to George R. Clark, surveyed and patented to him, lying below the Carolina line, and about two miles from Cumberland river; 1500 acres of land on Clark's river, below the Tennessee, and emptying into the Tennessee about three miles above the mouth, entered on a military warrant for George R. Clark. Also a mill seat, on Mill Run, in the town of Clarksville, granted the said George R. Clark by the trustees of the town of Clarksville; and, also, the reversion and reversions, remainder and remainders, rents, issues and profits of all and singular the premises, and of every part and parcel thereof, with the appurtenances; to have and to hold the said several tracts and parcels of land above described, and every part and parcel thereof, with the appurtenances, unto him, the said Thruston, his executors, administrators and assigns, forever, and to the only proper use, benefit and behoof of him, the said Thruston, his heirs, executors, administrators and assigns. And the said George Rogers Clark, for himself, his heirs and administrators, doth covenant with the said Thruston, his heirs, and assigns, that he is lawfully seised in fee of the premises, that they are free from all incumbrances, and that he has good right to and convey the same to the said Thruston and that he will arrant and uston, his hei nd assigns claims and d ands of all c nevertheless, that if he, the nd truly pay administr ur pounds ⅔ with legal inter on the am. day of May 1804, next ensu '5, the day of the date hereof, without any deduction, defalcation or abatement whatsoever, for, or by reason of any taxes, assessments or impositions whatsoever, either ordinary or extraordinary, already imposed, or hereafter to be imposed on the said premises, or any part thereof, that then and from thenceforth these presents, and every matter and thing herein contained, shall cease, determine and be utterly null and void to all intents and purposes, anything herein contained to the contrary notwithstanding.

In testimony whereof, the said George Rogers Clark hath hereunto set his hand and seal, the day and year above written.

G. R. CLARK, [L. S.]

Signed, sealed and delivered in presence of
EDMUND H. TAYLOR,
JNO. HOWARD.

"The deposition of Humphrey Marshall, of lawful age, taken at the Mansion House tavern, in the town of Frankfort, Kentucky, (kept by Richard Taylor,) to be read as evidence in a certain suit in chancery depending in the Jefferson Circuit Court, in Kentucky,

in which said suit Edmund H. Taylor, executor of John Thruston, dec'd, is complainant, and William Clark and others are defendants. This deponent, being first sworn, deposes and says:

"Question by complainant. Did you, or did you not, once make a contract in writing with the late George Rogers Clark, for the purchase of two large tracts of land south of Green river, the one containing acres, and the other acres?

"Answer. I contracted in writing with the late Gen'l G. R. Clark for the two large tracts of land on the Ohio, at and below the mouth of the Tennessee river, making together seventy-three thousand nine hundred and sixty-two acres, more or less.

"By same. What consideration did you agree to give for those lands?

"Answer. I was, by the said contract, to pay at the rate of half a dollar per acre for the expressed quantity.

"Question by same. Was that contract ever executed by said George Rogers Clark or his heirs?

"Answer. The contract was never executed by performance, either by Gen'l. G. R. Clark or his heirs.

"Question by same. Please state the reasons why said contract was finally vacated?

"Answer. On my being afflicted by a paralytic stroke, I gave up the contract on my part to my son, J. J. Marshall, who, after a part payment to Mr. D. Fitzhugh, acting for Gen'l Wm. Clark, rescinded the contract, as I have understood and believe.

"Question by same. Are you not apprised that about the year 1803, George Rogers Clark made a conveyance of those lands to his brother, William Clark, which deed of conveyance is recorded in the clerk's office of the Court of Appeals?

"Answer. I have seen the record above alluded to in the office of the Court of Appeals.

"Question by same. Did or did you not enter your protest against said deed and the recording thereof, at the time it was lodged with the clerk of the Court of Appeals for record.

"Answer. At the time, or very soon after I saw the record aforesaid, I did execute a protest against it, and left it to be recorded in the same office.

"Question by same. What induced you to make this protest?

"Answer. It was to evince my claim to the land, to give it publicity and to avoid any consequence of a seeming acquiescence on my part.

"By same. Did or did you not ever have any conversation with Gen'l William Clark on the subject of the conveyance, or the motives or consideration thereof; or did or did you not ever receive a letter or letters from the said Gen'l William Clark on the subject of said conveyance. If you have said letter yet in possession, please file it with and make it part of your response to this question. If you have lost or mislaid it, please state its contents.

"Answer. I do not recollect having any conversation with Gen'l Wm. Clark on the subject of the conveyance or protest. About the year 1819, living then in Paris, Bourbon, and hearing that Gen'l Clark was at the Blue Licks, I addressed a letter to him on the subject of the original contract, suggesting an execution on both sides (there having been at least one on each side,) without further litigations, considering the title at law was in him, with notice of the purchase by me of said lands.

"To this letter I think it was, I received his reply, from which this impression is distinct on my mind, 'that he took the conveyance of the land from his brother, to secure the payment of money which he had advanced to him, paid for him, or was bound to pay for him, or on some or all of these accounts;' no sum is recollected, but the letter suggested, that beyond that object, he was interested only as one of the heirs of Gen'l G. R. Clark, and that he was willing to adjust the matter on fair principles; the particular terms in which these ideas were conveyed are not recollected; and at a subsequent period Mr. D. Fitzhugh, as agent for Gen'l William Clark, met me with a view to effectuate said original contract. The aforesaid letter from said Clark, has been looked for, but not found.

"Question by same. Do you believe said letter, or the letter you received from him relative to the settlement of your business, was in his hand-writing?

"Answer. I cannot say that I was well acquainted with the hand-writing of said Gen'l Wm. Clark. I did not then doubt, from the contents of the letter alluded to, that it was from said Clark, *not* can I *dout* it now, he had as the letter stated, among other things, as I believe, that he had not received mine at the Licks, or until he had left the Licks.

"Question by same. Do you, or do you not know, that the heirs of Gen'l George Rogers Clark, to wit: the said William, and the brothers and sisters, &c., of said G. R. Clark, thro' their agent, Dennis Fitzhugh, ever made a contract with a certain Charles S. Todd, for the sale of the two tracts of land aforesaid?

"Answer. I do not recollect the parties' names, on the part of Clark, but was informed by s'd D. Fitzhugh, who I think shewed me the contract made with said Todd, for said land, at, I think, forty-five thousand dollars; the particulars are, however, not recollected.

"Question by same. Was, or was not, this contract with Todd, subsequent to the vacation of your contract aforesaid, spoken of?

"Answer. I believe the contract with Todd was prior to the vacation of the original contract with me.

"Question by same. What do you suppose to be the value of the aforesaid tracts of land?

"Answer. I never saw the said lands, and have had various descriptions of them; leaving it difficult for me to set any specific value on them, nor in fact can I do it.

"Question by same. Do you believe that the sale was a bona fide one, and on good consideration, from George Rogers Clark to William Clark?

"Answer. I knew certainly, that Gen'l Wm. Clark knew of my contract with George R. Clark, before he took the conveyance of the land as mentioned, and therefore thought it could not be bona fide as to me, although it be good as a security for any money that Gen'l G. R. Clark might owe said Gen'l Wm. Clark.

"Question by same. Do you believe that this contract or deed was made by G. R. Clark, to William Clark, for the purpose of defeating you in your claim?

"Answer. I certainly had suspicion of such an intent, not knowing really the object until apprised by the letter before mentioned, from Gen'l Wm. Clark, with what intent it was made. There had been various suits, but none prosecuted to effect; I had, too, disposed of my interest in the contract, to Robert Morris, and he had transferred it to Tho's Fitzsimons, and in consequence it was dormant for a number of years,until in the winter 1818, '19, I recovered it from the heirs of the latter.

"Question by same. You have stated in your deposition, that the conveyance from George R. Clark to Wm. Clark, was to secure him, William, for a sum of money advanced by him to G. R. Clark; do you not believe the land to be much more than sufficient to satisfy William for the money advanced?

"Answer. Without being able to any particular expression in the letter of Wm. Clark, above referred to, and that is my sole authority for my knowing any thing about the subject of amount, my impression is, that the sum intended to be secured bore but a small proportion to the contract price of the land conveyed.

"Question by same. Did, or did you not, ever hear Dennis Fitzhugh say, that the heirs of G. R. Clark *was* interested in the value or proceeds of said land?

"Answer. Although the legal title of said lands was in Gen'l Wm. Clark, and D. Fitzhugh acted under authority from him, I did understand distinctly from him, that said heirs were interested in said lands or the proceeds; this was however a circumstance which did not seem to interest me; what I wanted was the title and was willing to take it from Gen'l William Clark. And being no further interrogated, sayeth nothing more.

"Magistrate's fee, $1, p'd. H. MARSHALL."

"FRANKLIN COUNTY, *sct.*

"The above deposition of Humphrey Marshall was this day taken, subscribed and sworn to before the undersigned, a justice of the peace, in and for said county, at the place in the preamble mentioned.

"Given under my hand, this 17th day of January, 1824.

O. G. WAGGONER, *J. P.*"

"The deposition of John J. Marshall, of lawful age, taken at the house of Humphrey Marshall, in the town of Frankfort, to be read as evidence in a certain suit in chancery, depending in the Jefferson Circuit Court, in Kentucky, in which said suit Edmund H. Taylor, ex'r of John Thruston, is compl't, and Wm. Clark, &c., are deft's.

"The deponent being sworn, deposeth and saith: that about the year 1819, he became interested with H. Marshall, in a contract for about 75,000 acres of land, patented to George Rogers Clark, below the mouth of Tennessee. That the late Dennis Fitzhugh was the active agent who attended to the subject for, and on behalf of the heirs of G. R. Clark; the business however being done in the name of William Clark, late Governor of Missouri.

"This deponent knew the said land had been mortgaged to William Clark, but distinctly understood from the aforesaid Fitzhugh, who he understood married Mrs. Thruston, the sister of Wm. Clark, that said heirs of George R. Clark were all interested in said land. And this deponent thinks said Fitzhugh more than once mentioned the fact, of the number of persons among whom the price of said land was to be divided, and particularly assigned the smallness of the interest of his family, as a reason for his taking from this deponent a forfeiture of ten shares in the Bank of Kentucky, to indemnify him for his trouble and expense in attending to the matter.

"And further this deponent saith not.

J. J. MARSHALL."

"FRANKLIN COUNTY, *sct.*

"I do certify, that the foregoing deposition of J. J. Marshall was, on the 2d of April, 1824, being the first Friday, and after 3 o'clock, P. M., taken, subscribed and sworn to, at the place set forth in the caption, and before the subscriber, a justice of the peace for said county.

J. SWIGERT.

"My fee, $1, paid by compl't.
April 2d, 1824."

"The deposition of Humphrey Marshall, of lawful age, taken at the house of said Marshall, in the town of Frankfort, State of Kentucky, on the 28 day of May, 1824, to be read as evidence in a certain suit in chancery, depending in the Jefferson Circuit Court in Kentucky, in which suit Edmund H. Taylor, executor of John Thruston, dec'd, is complainant, and Wm. Clark and others are defendants.

"This deponent being first sworn, deposes and says: (the former

deposition of Humphrey Marshall, see page 134, of this record, was copied verbatim, to which the following was added.)

FRANKFORT, *May 28th*, 1834.

"Interrogatories addressed to Humphrey Marshall, Esq., whose deposition is this day to be taken by the complainant, in the suit in chancery, in the Jefferson Circuit Court, of Thruston's ex'r, vs. Clark, &c.

"Quest. 1st, by J. W. Denny, as atto. for William Clark, of Missouri. You have stated in a former deposition of yours, given in this cause, that you addressed a letter to Wm. Clark, at the Blue-Licks, and rec'd a reply from him; please to state what search you may have made for his reply, and if it is in your possession file it.

"Answer. I looked among some papers relative to the contract made with Gen'l G. R. Clark, and did not find it. It may, or may not be among my papers. I have no distinct recollection how I disposed of it; I was pleased to find by it, that Gen'l Clark was disposed to adjust matters; but as it contained nothing specific, it may have been neglected and lost.

"Quest. by same. Is, or is not, said reply in your possession?

"Answer. If being any where among my papers, either here or at Paris, is meant possession, I cannot answer positively either way; one thing I can, and do say, it is not so in my possession as that I can file it; if it were I would annex it to this paper.

"By same. You have also in your deposition stated the impressions which the reply left upon your mind; please now to give the *contents* of the letter, if you can?

"Answer. If I could have stated the contents of the letter, I should not have given impressions or general recollections only, in my former deposition, for the same reason as I have no more recollection of the contents now, than I had at that time, nor enough to warrant an attempt at recital; I must refer to the body of the deposition for my best recollections on the subject. The letter conveyed to me at least two distinct ideas, which made impressions; one was that he would, or was willing, to make an amicable adjustment, being what I wanted. The other explained to me, why he had taken the title to the land, when he knew I had bought it; and this was not only a new idea, but it relieved him in my mind from a censure, under which his taking the title placed him; at the same time it seemed as if the explanation was due to his own honor.

"By same. Did the reply, or letter afs'd, state the amount of money which said William Clark had paid for G. R. Clark, or the amount which he was to pay?

"Answer. I have no recollection that any sum was mentioned in the letter, nor can I now conceive a reason why it should have been; I am very sure the letter did not propose a partial adjust-

ment, upon the payment of the sum he claimed, which if it had might have been a reason for mentioning the amount; I cannot say there was any thing like intimacy between Gen'l W. Clark and myself; on the contrary, even when we met, and that was seldom, there was rather a distance observed, and which I attributed to feelings growing out of the contract and misunderstanding on both sides, as I had reason to believe.

"By same. In your deposition you say, you understood from Dennis Fitzhugh, that the heirs of G. R. Clark were interested in the lands or their proceeds; please to state now, whether you understood they were thus interested as heirs, or by contract or purchase from Wm. Clark, or, for all you heard from Fitzhugh, might not those persons have been interested by purchase, or contract with Wm. Clark, and not as heirs of G. R. Clark.

"Answer. A detailed answer to this question it would be improper to attempt on my scanty stock of knowledge. I have no recollection of Mr. Fitzhugh mentioning any purchase made from Gen'l W. Clark, but I do distinctly recollect his mentioning the heirs of the deceased G. R. Clark, not by name, but as persons in being, and so designated; and these persons were represented by him as being interested in the lands, and the proceeds of them; in that number, I think he included himself, mediately or immediately. Nor have I, from his conversation, any recollection or impression of a contract between the heirs of G. R. Clark and Gen'l W. Clark, as being the basis of their claim on the land; perhaps I should say that I did not think it my affair, nor make it the subject of enquiry. And further said not.

H. MARSHALL."

"Also, the deposition of John J. Marshall, of lawful age, taken at the house of the before named Humphrey Marshall, in the town of Frankfort; which said deposition is to be read as evidence in the suit aforesaid. The deponent being sworn, deposes and says—

(The former deposition of John J. Marshall was copied, see 139 page of this record, and then the following was added on the said 28th May, 1824.)

"This deponent remembers Mr. Fitzhugh stating, that Gen'l William Clark did not intend to avail himself of the conveyance made to him, except to secure money which he had advanced. And remembers distinctly, that he mentioned R. C. Anderson and the Croghans as interested. He does not remember any exception being made as to any of those who would have interested from G. R. Clark; nor did he hear of any mode by which his, Fitzhugh's, family were interested, except thro' their connection with G. R. Clark. The impression might have been made, that they claimed as heirs from the knowledge of the connection, and the circumstances of some being named, and the fact of the smallness

of interest which Fitzhugh said would accrue to his family, there being so many among whom to divide it. And further this deponent saith not.

J. J. MARSHALL.

"FRANKLIN COUNTY, *sct.*

"The foregoing depositions of H. Marshall and J. J. Marshall were taken, subscribed and sworn to before the subscriber, a justice of the peace for said county, this 28th May, 1824, at the place set forth in the caption.

J. SWIGERT, *J. P.*

"My fee $1, paid by compl't."

"I, Worden Pope, husband of the late Elizabeth T. Thruston, one of the daughters and distributees of John Thruston, deceased, do hereby release to Edmund H. Taylor, of the testament and last will of the said Thruston, for the benefit, interest and advantage of Charles M. Thruston, without any recourse, all the right, title and interest of myself and the said Elizabeth, my wife, of, in and to a debt, due and claimed by the said Taylor, executor, as aforesaid, under a mortgage given to the said Thruston by George R. Clark, and upon which a suit in chancery is now depending in the Jefferson circuit court, in the State of Kentucky, in the name of said Taylor, executor as aforesaid, against William Clark, and others, and I do hereby disclaim, (in favour of the said Charles M. Thruston,) all claim to the said debt and mortgage.

Witness my hand, this 6th day of June, 1823.

WORDEN POPE."

"The deposition of Worden Pope, taken at the office of Thruston and Richardson, in the town of Louisville, in the county of Jefferson, and State of Kentucky, on behalf of the complainant, to be read as evidence in a suit in chancery, now depending in the Jefferson circuit court, in the State of Kentucky, between Edmund H. Taylor, executor of the testament and last will of John Thruston, deceased, complainant, and William Clark and others defendants. The deponent being of lawful age and first duly sworn, deposes and says, that he, at the request of the said William Clark, carried a deed to the clerk's office of the court of appeals of said State, to be recorded, from George R. Clark to said William Clark, for two tracts of land, below the Tennessee river, in Kentucky. That he, as a witness to said deed, proved the same before the clerk of the said court; that said Pope was then on his way to Lexington, and on his return to Frankfort found that Humphrey Marshall, Esq., had entered a protest in said office against the said deed, and that he believes that the papers made part hereof, marked W. C. and H. M., are copies of the said deed and protest, and referred to for

greater certainty, filed with this deponent's former deposition in this suit. The deponent states, that the said William Clark told this deponent, that the said deed was made to him by the said George R. Clark, in order to bring the said Marshall to terms, in relation to the contract, which the said Marshall had from the said G. R. Clark for the land conveyed by the said deed, or to obtain a vacation of the said contract; that such was the object of the said William Clark, as declared by him concerning the said deed, this deponent is certain and positive. This deponent further deposes and says, that at the request of Dennis Fitzhugh, he drew a deed from the said William Clark, and the surviving brothers and sisters of the said G. R. Clark, deceased, and the representatives of those who were dead, for said land, to Chs. S. Todd, Esq., which was not finally executed and the contract vacated; and that in the course of the execution of the said deed, the acknowledgment of which was made by many of the parties, who were heirs of the G. R. Clark; and that this deponent distinctly understood, that all the parties, say the heirs of the said G. R. Clark, were acknowledged to have a part or share in the lands conveyed by said deed, as heirs of the said G. R. Clark. And the said William Clark admitted their right thereto, under a memorandum or writing of the said G. R. Clark, or of the said William Clark to him. The deponent is positively certain, that all the persons who signed and acknowledged the said deed claimed the land aforesaid, as the heirs of the said G. R. Clark. The deponent further states, that he believes that the said land was sold to the said Todd, for upwards of thirty thousand dollars; the exact amount this deponent cannot recollect. He also states, that the said G. R. Clark conveyed several tracts of land to the said William Clark, lying in the Illinois grant, in the State of Indiana; and that the deponent believed, that said lands were conveyed to prevent them from being sold under a judgment for a large sum, recovered by one Bazardon against the said G. R. Clark. The deponent further states, that the said William Clark was, as the deponent believes, the only surviving brother of the said G. R. Clark, deceased, at the time of his death; that Mrs. Lucy Croghan and Mrs. Fanny Fitzhugh are the sisters of the said G. R. Clark; that Mrs. Ann Gwathmey, deceased, wife of Owen Gwathmey, was one of the sisters of the said G. R. Clark, and died after him, leaving the following children and grand-child, viz: John Gwathmey, Temple Gwathmey, Samuel Gwathmey, George C. Gwathmey, Isaac Gwathmey, Diana M. Bullitt, wife of Thos. Bullitt, deceased, Mrs. Frances Jones, Lucy Priest, wife of Peter Priest, Catharine Woolfolk, wife of Geo. Woolfolk, Mrs. Elizabeth C. Anderson, wife of Richard C. Anderson, jr., and William Booth, son of Ann C. Booth, deceased, late wife of William H. Booth; that Mrs. Anderson, deceased, late wife of Col. Richard C. Anderson, was also a sister of the said George R. Clark, and died before him, leaving

the following named children, to wit: Richard C. Anderson, jr., Nancy Logan, wife of John Logan, Elizabeth C. Gwathmey, wife of Isaac R. Gwathmey, and Cecelia Anderson; that Jonathan Clark was also a brother of the said George R. Clark, and died before him, leaving the following children: John H. Clark, Isaac Clark, William Clark, Geo. W. Clark, Eleanor E. Temple, wife of Benjamin Temple, and Ann Pearce, wife of James A. Pearce; and that the said John H. Clark died unmarried and intestate, after the deaths of the said Jona. Clark and of the said G. R. Clark. The said deponent, Worden Pope, further deposes and says, that the release, which precedes his foregoing deposition, is his act and deed; and that at the taking of his said deposition he had no interest, direct or contingent, in the event of the suit therein mentioned, and is not to receive any part of the money or other thing which shall be recovered in the said suit; nor am I, the deponent, to be responsible in any way, in consequence of the said release. And further the deponent saith not.

WORDEN POPE."

"Worden Pope, whose deposition is given in the foregoing deposition of six pages, this included, is not to be responsible to me or my heirs, in any way, in consequence of the release at the head of his deposition, signed by him, to Edmund H. Taylor, exec'r, &c., for my benefit.

Witness my hand and seal, this 5th June, 1824.

CHS. M. THRUSTON." [L. S.]

"The deposition of Fortunatus Cosby, of lawful age, taken at the office of Thruston and Richardson, in the town of Louisville, by an adjournment from yesterday, to be read as evidence in a certain suit in chancery, depending in the Jefferson circuit court, in which Edmund H. Taylor, executor of John Thruston, dec'd, is complainant, and William Clark and others are defendants. The deponent being first sworn, deposes: That not long before the death of John H. Clark, a son of Jonathan Clark, Mat, a barber, who was then a slave, applied to this deponent, and informed him that he had deposited with and loaned to said John H. Clark a considerable sum of money, &c.; said Mat requested this deponent to apply said Clark to obtain his note and endeavour to get his debt secured; that he did apply to said Clark, who executed his note for, as he remembers, *for* $1,800, and odd dolls., to Isaac Miller, the guardian of Miss Terrill, to whom Mat then belonged. And said Clark promised, that he would secure the payment thereof by assigning notes, but failed to do so before he died; that after the death of said Clark, he applied to Dennis Fitzhugh, who he knew was well acquainted with said Clark's business and situation, to know if said debt could be secured. Said Fitzhugh informed this deponent, that said John H. Clark had an

interest of, he thinks, 2000 acres of land, in a large tract or tracts of land, south of Green river, as one of the representatives or heirs of Gen'l Geo. R. Clark.

"Quest. by complainant. Did, or did not, Gen'l. Jonathan Clark, the father of said John H. Clark, and of Mrs. Pearce, &c., die wealthy and leave his children rich?

"Answer. I have always so understood and believed.

"By same. Is, or is not, Mrs. Fanny Fitzhugh reported and believed to be in very independent circumstances?

"Answer. Yes.

"By same. Is, or is not, Benjamin Temple esteemed and believed to be in very independent circumstances?

"Answer. Yes.

"And further deponent says not.

F. COSBY."

"JEFFERSON COUNTY, *sct.*

"The foregoing deposition of Fortunatus Cosby was taken, subscribed and sworn to before the undersigned, a justice of the peace for the county aforesaid, at the office of Thruston and Richardson, in the town of Louisville, Kentucky, on the 8th June, 1824.

Given under my hand, this 8th June, 1824.

WM. FIELD, *J. P. J. C.*"

"The deposition of William Tompkins, taken this 3d day of June, 1824, at the office of Thruston and Richardson, to be read as evidence in a suit in chancery, now pending in the Jefferson circuit , in which Edmund H. Taylor, ex'r of John Thruston, deceased, is complainant, and William Clark and others are defendants. The deponent being of lawful age and duly sworn, deposes and says:

"That previous to the death of Dennis Fitzhugh, this deponent heard him several times speak of an interest in lands, south of Green river, claimed by the heirs of General George R. Clark, which interest descended to them, as this deponent understood from said Fitzhugh, in the character of heirs of said Clark. The said Dennis Fitzhugh married a sister of the said Clark. Major William Croghan, who married one of the heirs of said Clark, died wealthy; and Col. R. C. Anderson, who also married a sister of said Clark, is now considered by me as rich. And further says not.

W. TOMPKINS."

"JEFFERSON COUNTY, *sct.*

The foregoing deposition of William Tompkins was taken, subscribed, and sworn to before the undersigned, a justice of the peace

of the county and commonwealth afs'd, on the 3d day of June, 1824, at the office of Thruston and Richardson, in Louisville, Kentucky.

Given under my hand, as justice of the peace afs'd, this 3d day of June, 1824.

F. COSBY, *J. P.*

Justice's fee p'd by complt., $1."

"The taking of depositions in the case mentioned in the caption of the foregoing deposition, is adjourned till the 4th day of June, 1824, to the office of Thruston and Richardson, in Louisville, Kentucky; at which place I met, and the complt. not being prepared to take further depositions, his witnesses not attending, the further taking was adjourned till the 5th June, 1824, to meet again at the office of s'd Thruston and Richardson.

Given under my hand, as justice of the peace for the county afs'd, this 5th June, 1824.

F. COSBY, *J. P. J. C.*

"JEFFERSON COUNTY.

"I, William Tompkins, a justice of the peace in and for said county, do certify, that on the 5th day of June, 1824, at the request of complt. in the aforementioned suit, I attended at the office of Messrs. Thruston & Richardson, for the purpose of taking depositions in said cause; and no witness appearing, the business was adjourned to the 6th, at which time, and at the same place, the deposition of Worden Pope was taken, subscribed, and sworn to before me; and the business was again adjourned to the 8th, the 7th being Sunday.

In testimony of all which, I hereunto set my hand and seal, [L. S.] this 13th day of June, 1824.

WM. TOMPKINS, *J. P. J. C.*"

"My fee $2, p'd by Chas. M. Thruston.

WM. TOMPKINS, *J. P.*"

"The deposition of Samuel T. Fitzhugh, taken at the office of Charles M. Thruston, in the town of Louisville, on the 15th day of April, 1824, to be read as evidence in a suit now depending in the Jefferson circuit, in which the Executor of John Thruston is complt., and William Clark and others are defendants. It being the 3d Thursday in this month, the deponent being of lawful age and duly sworn, deposes and says: that he was intimately acquainted with Gen'l George Rogers Clark, from the year 1808 till the time of his death; that from the time he became acquainted with said Clark, till his death, he was in a state of extreme bodily debility; and deponent is of opinion that he was not in the habit of handling much money; that he has heard his brother, Dennis

Fitzhugh, before his death, and his wife, Fanny Fitzhugh, the sister of said G. R. Clark, say that they were interested in two large tracts of land south of Green river, which the said Clark claimed at the time of his death, but which was then in dispute; that Major William Croghan, at the time of his death, was a man of wealth, as was also Thomas Bullitt; and Col. R. C. Anderson is reputed to be so; and further saith not.

S. T. FITZHUGH."

"Adjourned till to-morrow morning, by me,

WM. TOMPKINS, *J. P. J. C.*

Ap'l 4, 1824."

"16 April, 1824, adjourned till to-morrow.

WM. TOMPKINS, *J. P. J. C.*"

"Also, the deposition of William Tompkins, taken on the 17 day of April, 1824, at the place afs'd. Deponent being duly sworn, says: that after the death of General George Rogers Clark, he heard Dennis Fitzhugh, husband of Fanny Fitzhugh, one of the defendants, speak of a claim to land in the southern part of this State, by the heirs of said Clark, which this deponent understood they claimed by descent from said Clark; and further says not.

W. TOMPKINS.

17th April, 1824."

"The further taking depositions in this cause is adjourned until Monday, the 19th inst., by me.

WM. FIELD, *J. P. J. C.*

17th April, 1824."

"JEFFERSON COUNTY, *sct.*

"I, William Tompkins, a justice of the peace for said county, do hereby certify, that the foregoing deposition of Samuel T. Fitzhugh was taken, subscribed and sworn to before me, at the office of Charles M. Thruston, in the town of Louisville, on the 15th day of April, 1824. I do further certify, that the adjournments stated above, as made by me, were regularly made, from day to day, at the place afs'd.

[L. S.] Witness my hand and seal, this 19th day of April, 1824.

WM. TOMPKINS, *J. P. J. C.*"

"My fee $3, paid by Charles M. Thruston.

WM. TOMPKINS, *J. P. J. C.*"

"JEFFERSON COUNTY, *sct.*

I, William Field, a justice of the peace for the county afs'd, do

hereby certify, that the foregoing deposition of William Tompkins was taken, subscribed, and sworn to before me, at the office of Charles M. Thruston, in the town of Louisville, on the 17 day of April, 1824.

Given under my hand, as justice of the peace as afs'd, this 19th day of April, 1824. And that the complt. wishing not to take any other depositions, the same is finally adjourn*ment*.

WM. FIELD, *J. P. J. C.*

Mag. fee $1, by C. M. Thruston."

Depositions on part of Deft., Wm. Clark.

"The deposition of Charles W. Thruston, taken this 10 June, 1824, at the office of Denny and Nicholas, in Louisville, to be read in evidence on behalf of Wm. Clark, of Missouri, in a suit in chancery depending in the Jefferson circuit court, wherein John Thruston's ex'r. is complt., and s'd Wm. Clark and others are defts.

"The deponent being of lawful age, and first duly sworn, deposes and says:

Question by Denny & Nicholas, atto's for Wm. Clark. In giving your deposition in this cause, at the instance of the complt., you stated that the heirs of G. R. Clark were entitled to a proportion of the lands mentioned in said deposition; please now to state, whether you intended to convey the meaning that they claimed *as heirs*, or how do they or did they claim?

Answer. I intended to convey the idea, that the individuals who were heirs of said G. R. Clark, claimed a proportion of the land referred to in my former deposition, not in their character of heirs, but under a contract signed by said Wm. Clark, a copy of which is annexed hereto, as a part of my deposition. The only claim which said G. R. Clark's heirs set up, or ever have claimed to said land, to my knowledge, is revived under the contract afs'd.

By Complt. When did you first see the contract before spoken of.

Answer. I do not know. And further says not.

C. W. THRUSTON."

"The within deposition may be read upon the trial without certificate of oath.

THRUSTON, *for Complt.*

12 June, 1824."

"Whereas, George Rogers Clark did, in his lifetime, by his certain indenture, which is duly recorded in the office of the clerk of the Court of Appeals, of the State of Kentucky, for the consideration therein mentioned, *did* convey to me, William Clark, of the town of St. Louis, in the State of Missouri, two certain tracts of

land, lying and being in the said State of Kentucky, on the Ohio river, at and below the mouth of the Tennessee river, adjoining to each other, containing, together, the quantity of seventy-three thousand nine hundred and 62 acres, more or less. And whereas, William Croghan, dec'd, Owen Gwathmey, Dennis Fitzhugh, and the heirs of Jonathan Clark, and of Eliza. Anderson, late Eliza. Clark, dec'd, having contributed their respective proportions of the expense and charges in defending a certain suit brought by Humphrey Marshall, against me: Now know all men by these presents, that I, the said William Clark, in consideration of the premises, do hereby bind and oblige myself, my heirs, executors, and administrators, so soon as a division of said property can be effected, agreeably to a division hereinafter stated, to convey to the heirs of Jonathan Clark, dec'd, the heirs of Eliza. Anderson, dec'd, the heirs of Ann Gwathmey, late Ann Clark, dec'd, the heirs of Dennis Fitzhugh, dec'd, and to Lucy Croghan, late Lucy Clark, so much of said tracts of land as lies west of Levi Hollingsworth's upper tract in said surveys; after excluding a claim of 5,000 a., conveyed heretofore to Fanny Fitzhugh; 4,006½ a., to the said Levi Hollingsworth; 4,350½ a., conveyed to Henry Innis, and one-sixth part thereof, which may fall to myself, by ballot, to wit: to the heirs of Jonathan Clark one-sixth, being that part designated by letter (B), on a map of said land deposited in the hands of Samuel Gwathmey. To the heirs of Ann Gwathmey, late Ann Clark, one-sixth part, being that part designated on said map by the letters (A A), excepting one thousand acres thereof, off of either side or end, at the option of Geo. Woolfolk, to the said Woolfolk. To the heirs of Eliza. Anderson, late Eliza. Clark, dec'd, one-sixth, being that part designated by letter (C). To the heirs of Dennis Fitzhugh, deceased, one-sixth part, being that part designated by letter (F); and to Lucy Croghan, late Lucy Clark, one-sixth, being that part designated on said map by letter (D). The said ballot having been made at the time of executing this bond by me, at the request and in pursuance of most of the parties concerned; the expenses of said division is to be borne by the said parties interested, in proportion to their respective claim; and should it be discovered that after settling several other smaller claim against said land, to the discharge of which about 4,000 acres are reserved, lying on the upper line of the upper survey, adjoining to and above a 12,000 a. tract reserved to myself, lying above and adjoining to Hollingsworth's upper tract, there should be a balance of s'd 4,000 acres, I do oblige myself, my heirs, &c., to convey such remainder to the heirs aforsaid, in the same proportion as in the part of the tract first herein mentioned in this obligation.

The conveyance to be made by deed, with special warranty, and only to pass by title to the same.

Witness my hand and seal, this 2d day of April, 1823.

WM. CLARK, [L. S.]

Test: W. H. BOOTH."

"The ballot for the within mentioned tract, as lettered, was drawn by me, at the request and in the presence of Gen'l William Clark, as stated in the bond.

T. B. BULLITT.

April 2d, 1823."

March 14, 1824.

"The above this day copied by me from the original, which is, I believe, in the hand-writing of R. C. Anderson.

J. W. D."

"The deposition of Gen'l Ro. Breckenridge, taken on the 16 June, 1824, at the court-house, in Louisville, to be used for deft., Wm. Clark, in the suit in chancery, in the Jefferson Circuit Court, wherein Jno. Thruston's ex'r is compl't, and s'd Clark, &c., are def'ts.

The deponent being of lawful age, and first duly sworn, deposes and says: that he was the agent of Sam'l Beall, dec'd, and for his representatives after his death, and had superintended the business of the estate generally, in Kent'y; that he recollects applying to Gen'l William Clark for the payment of a sum of money, on account of a demand which deponent had to collect for Beall's estate, against Gen'l George R. Clark, which the said William paid in the year 1803, as deponent believes; deponent says the sum of money so paid, as he believes, was upwards of £250.

Quest. by Compl't. Why did you apply to Wm. Clark?

Ans. Because I understood Gen'l R.'s estate was very much embarrassed, and that Gen'l Wm. Clark was attending to his business, and was paying some of his debts.

Quest. by same. Do you know out of whose funds he paid said debts?

Ans'r. I do not.

Quest. by same. Was Wm. Clark bound as security, or otherwise, to pay the debt you had to collect for Beall, above mentioned?

Ans'r. No; and further says not.

RO. BRECKENRIDGE.

"The above is to have effect, as sworn to.

GRAYSON, *for Compl't.*
DENNY & NICHOLAS,
for Deft."

STATE OF KENTUCKY.

I, Edmund P. Pope, clerk of the Jefferson Circuit Court, in the State of Kentucky, do certify, that the foregoing one hundred and fifty-eight pages contain a true and complete transcript of the

record and proceeding in the cause therein mentioned, as the same appears in my office.

Witness my hand, this 10th day of August, 1836.

EDM'D P. POPE.

UNITED STATES OF AMERICA,
Department of State.

To all to whom these presents shall come, greeting:

I certify, that the documents hereunto annexed are true copies of the printed maps, now on file in this department.

In testimony whereof, I, Fletcher Webster, acting Secretary of State of the United States, have hereunto subscribed my name, and caused the seal of the department of State to be affixed. Done at the City of Washington, this twenty-ninth day of April, A. D. 1841, and of the Independence of the United States of America, the sixty-fifth.

[L. S.]

FLETCHER WEBSTER,
Acting Sec'y.

[Here follow plats.]

DISTRICT OF COLUMBIA,
City of Washington, sct.

I, William W. Seaton, Mayor of the City of Washington, and district aforesaid, certify—that on the 27th day of October, in the year 1840, before me, personally appeared Peter Force, a witness produced on the part of Robert Porterfield, complainant in a certain suit in chancery, depending in the Eighth Circuit Court of the United States for the eighth circuit, and Kentucky district, holden at Frankfort, in the State of Kentucky, wherein Robert Porterfield is complainant, and Martha L. Clark, William P. Clark, George H. Clark, and Thomas I. Clark and others are defendants; and said Peter Force being by me first carefully examined, and cautioned, and sworn to testify the truth, the whole truth, doth depose and say, in answer to the following interrogatories propounded by plaintiff's agent:

Deposition of Peter Force.

Interrogatory 1. Have you been for some years engaged, under the authority of an act of Congress, in obtaining materials for the publication of a work, containing an authen history of Virginia, whilst a colony of Great Britain, and of the other colonies?

Answer. I have engaged many years in collecting authentic papers connected with the history of the United States, from the settlement of the several colonies (including Virginia) to the adoption of the federal constitution. A contract was made with the Secretary of State of the United States in March, 1833, under authority of an act of Congress for the publication of these papers.

Interrogatory 2*d.* Have you, in the prosecution of your undertakings, obtained maps, charts, histories, and other authentic and well-credited documents of Virginia, during her colonial dependence, and after she became a State, up to the year 1779?

Answer. In the prosecution of this undertaking I have obtained a very good collection of maps, printed books, and manuscript documents and records, relating to Virginia and the other States during their colonial dependence, and after they became independent, up to the year 1789?

Interrogatory 3*d.* Will you, from the books, maps, charts, and other documents you are possessed of, state to what tribe or nation of Indians the lands lying in the south-western part of what is now [Kentucky,] between the rivers Tennessee, Ohio, and Mississippi, and the boundary line between what is now the States of Kentucky and Tennessee, was considered as belonging previous to the year 1779—and give a reference to any books, maps, charts, or documents you are possessed of, going to show that fact?

Answer. After an examination of such books, maps, treaties, and other authentic papers as I have in my own possession, and of such as I have found in the Department of State of the United States, my answer to this interrogatory is—that, in my opinion, the land described therein belonged to the Cherokees previous to the year 1779.

All the maps I have found that designated the Cherokee *country*, place it north of the Chickasaws, extending westward to the Mississippi, and northward to the Ohio. I have, in no instance, found in any map the lands, referred to in the interrogatory, marked as belonging to any other tribe of Indians. Extracts relating to this particular district, traced from fourteen maps, are hereto annexed, marked No. 1, No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, No. 8, No. 9, No. 10, No. 11, No. 12, No. 13 and No. 14. On two of these the Cherokee *country* is not designated.

On Mitchells's map, published in London in 1755, (an extract of which is hereto annexed, marked No. 3,) it is stated, that "the country of the Cherokees, which extends westward to the

Mississippi, and northward to the confines of the Six Nations, was formerly surrendered to the crown of Britain, at Westminster, 1729." And a map in the American Gazetteer, printed in London in 1762, (an extract of which is hereto annexed, marked No. 4) it is stated, that "the country of the Cherokees extended westward to the Mississippi, and northward to the Six Nations, was surrendered by treaty at Westminster, in 1729, to the crown of Great Britain." The treaty of September, 1730, was the first one made in England with the Cherokee nation, and is evidently the one referred to by these two maps. By this treaty, the *sovereignty* of the country was surrendered, not the *soil*.

It a treaty of submission, but left to the Cherokees their whole territory. The treaty, and three papers connected with it, are hereto annexed, marked A, B, C, D.

The Cherokees claimed a large extent of territory on the Ohio, above its junction with the Mississippi; and although adverse claims were afterwards set up to a portion of it, under treaties with the Six Nations, at Lancaster, in 1744, at Johnson Hall, in 1765, and at Fort Stanwix, in 1768, the right of the Cherokees was admitted by the treaty at Lochaber, in 1770, and the boundary marked by the lines run in 1771, according to the provisions of that treaty. This appears by a letter and talk from Mr. Sewart, agent and superintend of Indian affairs in the southern department, dated in June, 1773, (copies of which are hereto annexed, marked E and F,) and by the map therein referred to, giving the boundaries marked in 1771, (a copy of which is hereto annexed, marked G.)

Lord Dunmore, in a letter to the Cherokees, dated Williamsburg, March 23d, 1775, (a copy of which is hereto annexed, marked H,) complaining of, and remonstrating against their sale of land to Col. Henderson, advances no pretence of any claim on the part of Virginia, or in the name of the king, to the land in question, under any previous cession or purchase in favour of the colony or the crown, but rests his objections to the sale, solely on the ground of its being a violation of the instructions of the king, which prohibited all private persons from treating with the Indians for their lands. A copy of the instructions referred to by Lord Dunmore is hereto annexed, marked (I.)

The maps and the papers herein before referred to, and the treaty of July 20th, 1777, between Virginia and the Cherokees, (a copy of which is hereto annexed, marked M,) all go to show, that the land of the Cherokees extended west to the Mississippi, north to the Ohio, and eastward up that river above the mouth of the Kentucky.

Besides the claim of the Six Nations, I have found but two authorities that conflict with those above cited. Major Robert Rogers, in his "Concise account of North America," printed in London, in 1765, says: "The Tennessee is wholly uninhabited below the mountains, to where it joins the Ohio, but the country

upon it is claimed by the Chickasaws;" and Col. Preston, in a letter to the Cherokee chiefs, dated Fincastle county, Virginia, April 12th, 1775, (a copy of which is hereto annexed, marked K,) tells them, "they know the land sold to Henderson was the property of the northern Indians, till they sold it to the king, and that it is but a few years since they first pretended to claim it."

But I have found none, besides Major Rogers, who mentions the claim of the Chickasaws to the land on the Tennessee; and the treaty in 1770, the running of the lines in 1771, the letter and talk of Mr. Stewart, in 1773, and the silence of Lord Dunmore, in his letter of March, 1775, furnish, in my opinion, full and satisfactory evidence, that up to that time, the right of the Cherokees to the territory on the Ohio was admitted to be just: and this opinion is strengthened by the treaty of 1777; which, in effect, admits and confirms the previous treaties and boundaries.

Interrogatory 4. Will you append to your deposition a copy of any map or chart you are possessed of, which lays down the boundaries or possessions of the Cherokee and Chickasaw Indians in 1779, or previous?

Answer. None of the maps I have met with, mark the boundaries between the Indian nations. In regard to the Cherokees or Chickasaws, the boundary between them appears to have been the ridge of land near the 35th degree of north latitude, which separates the streams running north, from those running south—the Chickasaw country being in the south, on the head waters of the Yazoo; and the Cherokee country on the north of the ridge, taking in all the waters on that side of it.

[Here follow Plats.]

This ridge is noticed in most of the maps mentioned in my answer to the preceding interrogatory. PETER FORCE.

And I, the said William W. Seaton, further certify, that the said testimony of the said Peter force was, by him, subscribed in my presence, after the same was, by him, in my presence, reduced to writing; that I am not of counsel or attorney to either of the said parties, nor interested in the event of the said cause; and that no notice was given to the adverse party, or their attorney in the said cause, because neither of them resided within one hundred miles of the place of caption, as I was informed. And I further certify, that the said deposition is taken, to be used in the suit aforesaid; and that the cause of taking the same is, that the said Peter force was, and is now, at a

greater distance than one hundred miles from the place of trial of the said suit.

In testimony whereof, I have hereunto set my hand, and [L. S.] caused the seal of the Corporation of Washington to be affixed, the day and year above written.

W. W. SEATON, *Mayor.*

Attest:
C. H. MILBERGER, *Register.*

The exhibits E, H, K, L, M, and plat mark F, referred to in the foregoing deposition, will be found copied in a transcript of papers, heretofore copied and certified by Fletcher Webster, acting Secretary of State—and the following are copies of the balance of the exhibits mentioned in the above deposition:

Paper A.

Account of the Cherokee Indians, and Sir Alexander Cuming's journey amongst them.

At the end of June last, there arrived in London seven Indians, of the nations bordering upon the province of South Carolina, who were brought over by Sir Alexander Cuming, a Scots gentleman, and sent as deputies to make a tender of submission and obedience to his majesty from those people.

The following account of the nation, and of Sir Alexander's journey and reception by the Indians, are very curious:

The whole Cherokee nation is governed by seven mother towns; each of these towns *chuse* a king to preside over them and their dependants. He is elected out of certain families, and regards only the descent by the mother's side.

The towns which *chuse* kings, are Tannassie, Ketioah, Ustenary, Telliquo, Estootowie, Keyowee, Noyohee; whereof four of the kings are dead, and their places are to be supplied by new elections.

The kings now alive are, the king of Tannassie, in the upper settlements; the king of Ketioah, in the middle settlements; and the king of Ustenary, in the lower settlements.

There are several towns that have princes—such as Tamasso, one; Settecho, one; Tassetcheo, one; Iwasseonee, one; Telliquo, two; Tannassie, two; Cannosteo, one; Cowee, one.

Besides these, every town has a head warrior, who is in great esteem among them, and whose authority seems to be greater than their kings; because their kings are looked upon as little else than a *cine* magistrate, except it so happens that he is at the same time a head warrior.

Their conjurors are the persons consulted in every affair of importance, and seem to have the direction of every thing. The

chief of them are that of Telliquo, that of Tapelchee, that of Iwassie, and that of Noyohee.

Maytoy, of Telliquo, presides, at present, as emperor over the whole. He was chosen at Nequassie, April 3d, 1730, and had an absolute, unlimited power given him by the unanimous consent of the whole people, in the presence of Sir Alexander Cuming, who was then upon the spot, with Elagar Wiggan, Ludovick Grant, Samuel Brown, William Cooper, Agnus McPherson, Martin Hare, David Dowie, George Hunter, George Chicken, Lacklain Mackbain, Francis Baver, and Joseph Cooper—all British subjects—besides the Indian head men; with full powers given them from the several towns of their settlements. Such an appearance as this, never was seen at any one time before in that country.

It was given out in the English settlements, that the Indians would rise in the spring, so that the traders would not venture to return again among them, for fear of being murdered; notwithstanding which, Sir Alexander Cuming resolved to venture, and set out from Charles Town the 13th last March. About 100 miles upwards from Charles Town, Captain Russell told him that the French had been endeavouring, for these two years past, to seduce the lower Cherokees to their interest, by means of one Whitehead Vormin Paris; and the captain likewise told him, that he had acquainted the Government of the encroachments made by the French, by building forts in the Creek nation, for several years past.

Several miles from this place, Sir Alexander left all his company behind, and proceeded forward only with his guide, William Cooper: the rest met him at Nequasie the 3d of April.

March 23d, Sir Alexander arrived at Keakwee, the first town of the Cherokees, about 300 miles from Charles Town, where he was informed by Mr. Barker, a trader, that last February there had been a messenger from the lower Creeks with the Cherokees, desiring them to come over to the French interest, who promised to send them back loaded with presents. That the Cherokees desired the Creeks to go first to the French, and receive their presents, and then return to them with their report; and that upon the return of these messengers, he (Mr. Barker) expected that the lower Cherokees would rise; for at that time they were so unruly, that the traders dare scarce speak to them.

However, this evening Sir Alexander Cuming went into the town-house, armed with three cases of pistols, a gun, and his sword, where the head men of the town, in the midst of 300, own'd obedience to him on their knees. Here Sir Alexander caused them to despatch expresses through the whole towns of their nation, for the head men of every town within the upper, middle, and lower settlements, to meet him at Nequasie the 3d of April.

The 27th of March, Sir Alexander arrived at Tastchee, in the

middle settlements. There happened to be most terrible thunder, lightning, and rain this night, that the like never had happened before in the memory of any of them. Here their great conjurer told Sir Alexander, that he knew that he was come amongst them to rule, and that their whole nation must do whatever he bid them.

The 29th he arrived at great Telliquo, in the upper settlement, 200 miles up from Keakwee. Moytoy, the head warrior, here told him, that the year before, the nation designed to have made him head over all, but he said that now it should as Sir Alexander pleased.

Here the great conjurer declared the same; and both told him they would make him a present of their crown.

The 30th he arrived at Great Tannasie, 16 miles up from Telliquo. The path from Telliquo to this place was said to be lined with enemies, but neither Sir Alexander nor Mr. Grant met with any accident. This day he made the King of Tannasie declare his obedience on his knees, and returned to Telliquo the same night. From thence he returned to Nequassie, where the kings, princes, warriors, conjurers, and beloved men, were all met, according to his appointment, the 3d of April, most of which had come there the day before. Here, with great solemnity, Sir Alexander was placed in a chair, by Moytoy's orders, Moytoy and the conjurers standing about him, while the warriors streaked him with 13 eagles' tails, and then singers sung from morning till night, and as their custom is on solemn occasions, they fasted the whole day.

After this solemnity of streaking him was over, Sir Alexander, in a speech to them, represented the great power and goodness of his majesty King George, whom he called the great man on the other side of the great water; that himself and all his subjects were to him as children, and they all would do whatever the great king ordered them. He told them, that though he had his majesty's leave to travel where he pleased, yet the great king did not know of his coming amongst them; he required Moytoy and all the head warriors to acknowledge themselves dutiful subjects and sons to King George; and promised that they would do whatever Sir Alexander should require of them, that he might be the better able to answer for their conduct; all which they did upon their knees, calling upon every thing that was terrible to them to destroy them, and that they might become no people, if they violated their promise and obedience.

Sir Alexander ordered that the head warriors should answer for the conduct of their people to Moytoy, whom appointed their head by the unanimous consent of the whole people, and to whom, at Sir Alexander's desire, they all gave an unlimited power over them; and he to answer to Sir Alexander.

April 4th. The crown was brought from Great Tannassie, which, with five eagles' tails, and four scalps of their enemies,

Moytoy presented to Sir Alexander, impowering him to lay the same at his majesty's feet.

All the conjurers told him, they knew that they must follow his directions in everything, and said that when he left them they would still consider him as present, in the person of Moytoy of Telliquo, who would punctually do what he bid them; and at parting, Moytoy desired he would transmit to him what orders he thought fit, by the interpreter, William Wiggin.

As the concession made to Sir Alexander was not a thing in itself very credible, when the eye-witnesses themselves declared they would not have believed such a thing possible, if they had not seen it, Sir Alexander did not care to report what had happened upon his own single authority, if it could be avoided. He had promised to be at Charlestown on the 20th of April, in order to go to England in the Fox man-of-war, and had now but fifteen days to perform a journey of 400 miles in; he asked Moytoy if the Indians could travel there in so short a time on foot; who told him that it might be done, and that he would have waited on him himself, but that his wife wrs dangerously ill, and therefore desired Sir Alexander to choose whom he pleased to attend him.

Upon this, Sir Alexander chose, as evidence of the truth of what had happened, the head warrior of Tassetchee, a man of great power and interest, who has a right to be a king, and is called Oukah War (that is, the King that is to be); Shallebechee, the second warrior, otherwise Wettagusta, or Prince; Tathtowie, the third warrior, and Collannah, a fourth warrior; and from Tannassie, the remotest town of the country, he Clogoitah, and Oukaualkan, warriors; because the people in Carolina believed it was not possible to travel the length of Tannassie and back again in less than three months, whereas the time that Sir Alexander had limited himself to do it in, was from the 13th of March to the 20th of April—the distance being about 500 miles.

Sir Alexander returned to Charlestown on the 13th of April, leaving the Indians on the road, to the care of Mr. Hunter, who reached Mr. Kinlock's with them the 19th—distant 23 miles from Charlestown. It was thereabouts that those Indian chiefs met with the warrior Ounahannowie, a friend of their own, who was just come from the Kettasha nation, and desired to go along with his countrymen, to which Sir Alexander consented. There were several other Indians along with Ounahannowie, whom Sir Alexander declined to take along with him.

They went aboard the Fox man-of-war, which sailed from the bay of Charlestown the 4th of May, and arrived at Dover the 5th June, in the morning, where Sir Alexander landed, and took post and arrived at London that night, with the crown of the Cherokee nation, leaving the Indians behind, to come up with the man-of-war. He let the Secretary of State immediately know that he had full power from that nation to lay their crown at his majesty's

feet, and that he had brought over seven Indian chiefs, as an evidence of the truth.

His majesty was graciously pleased to order Sir Alexander to bring in his people to the installation, the 18th of June; when they were extremely surprised at the magnificence of everything about them.

They compared the king and queen to the sun, the princes to the stars, and themselves to nothing.

On the 22d of June, Sir Alexander was introduced to his majesty, and upon his knee, in presence of the court, declared the full power he had received; the Indian chiefs all kneeling at the same time that Sir Alexander kneeled, as a testimony of their submission and approbation. Sir Alexander laid the crown of the Cherokee nation at his majesty's feet, with the five eagle tails, as an emblem of his majesty's sovereignty, and four scalps of Indian enemies; all of which his majesty was graciously pleased to accept of.

Paper B.

Articles of friendship and commerce, proposed by the lords Commissioners for Trade and Plantations, to the deputies of the Cherokee nation, in South Carolina, by his majesty's order, on Monday, September 7th, 1730.

Whereas, you, Seayagustah Oukah, chief of the towns of Taspetsah, you Scalicloskeu Keragusta, you Tethtowe, you Clogoittah, you Collonnah, you Ouconnacon, have been deputed by Moytoy, of Telliquo, with the consent and approbation of the whole nation of the Cherokee Indians, at a general meeting at Nikeusseu, the 3d of April, 1730, to attend Sir Alexander Cumming, Bart., to Great Britain, where you have seen the great King George, at whose feet the said Sir Alexander Cumming, by express authority for that purpose, from the said Moytoy, and all the Cherokee people, has laid the crown of your nation, with the scalps of your enemies and feathers of glory, in token of your obedience: Now the King of Great Britain, bearing love in his heart to the powerful and great nation, the Cherokee Indians, his good children and subjects, his majesty has empowered us to treat with you here; and accordingly, we now speak to you as if the whole nation of the Cherokees, their old men, young men, wives and children, were all present; and you are to understand the words we speak as the words of the great king our master, whom you have seen; and we shall understand the words you speak to us, as the words of all your people, with open and true hearts, to the great king; and thereupon we give four pieces of striped duffles.

Hear, then, the words of the great king whom you have seen, and who has commanded us to tell you that the English everywhere, on all sides of the great mountains and lakes, are his people, and children whom he loves; that their friends are his friends, and

their enemies are his enemies; that he takes it kindly that the great nation of the Cherokees have sent you hither, a great way, to brighten the chain of friendship between him and them, and between your people and his people; that the chain of friendship between him and the Cherokee Indians is like the sun which doth shine here, and also upon the great mountains, where they live, and equally warms the hearts of the Indians and the English; that as there are no spots of blackness in the sun, so is there not any rust or foulness in this chain; and as the great king has fastened one end of it to his own breast, he desires you will carry the other end of the chain, and fasten it well to the breast of Moytoy of Telliquo, and to the breasts of your old wise men, your captains, and all your people, never more to be broken or made loose; and hereupon we give two pieces of blue cloth.

The great king and the Cherokee Indians, being thus fastened together by the chain of friendship, he has ordered his children and people, the English, in Carolina, to trade with the Indians, to furnish them with all manner of goods that they want, and to make haste to build houses, and to plant corn, from Charlestown towards the town of the Cherokees, behind the great mountains; for he desires that the Indians and the English may live together, as the children of one family, whereof the great king is a kind and loving father; and as the king has given his land on both sides of the great mountains to his own children, the English, so he now gives to the Cherokee Indians the privilege of living where they please; and hereupon we give one piece of red cloth.

The great nation of Cherokees being now the children of the great King of Great Britain, and he their father, the Cherokees must treat the English as brethren of the same family; and must be always ready, at the governor's command, to fight against any nation, whether they be white men or Indians, who shall dare to molest or hurt the English; and hereupon we give twenty guns.

The nation of the Cherokees shall, on their part, take care to keep the trading path clean, and there be no blood in the path where the English white men tread, even though they should be accompanied by any other people, with whom the Cherokees are at war; whereupon we give 400 lbs. weight of gunpowder.

That the Cherokees shall not suffer their people to trade with the white men of any other nation but the English, nor permit the white men of any other nation to build any forts, cabins, or plant corn, amongst them, or near to any of the Indian towns, or upon the lands which belong to the great king; and if any such attempt shall be made, you must acquaint the English governor therewith, and do whatever he directs, in order to maintain and defend the great king's rights to the country of Carolina; whereupon we give 500 lbs. weight of swan shot, and 500 lbs. weight of bullets.

That if any negro slave shall run away into the woods, from their English masters, the Cherokee Indians shall endeavor to

apprehend them, and either bring them back to the plantation from whence they run away, or to the governor; and for every negro so apprehended and brought back, the Indian who brings him shall receive a gun and a match-coat; whereupon we give a box of vermillion, 10,000 gun-flints, and six dozen of hatchets.

That if, by any accidental misfortune, it should happen that an Englishman should kill an Indian, the king or great man of the Cherokees shall first complain to the English governor, and the man who did it shall be punished by the English laws, as if he had killed an Englishman; the Indian who did it shall be delivered up to the governor, and be punished by the same English law, as if he were an Englishman; whereupon we give twelve dozen of spring knives, four dozen of kettles, and ten dozen of belts.

You are to understand all that we have now said, to be the words of the great king, whom you have seen; and as a token that his heart is open, and true to his children and friends, the Cherokees, and to all their people, he gives his hand in this belt, which he desires may be kept, and shown to all your people, and to their children, and children's children, to confirm what is now spoken, and to bind this agreement of peace and friendship, betwixt the English and Cherokees, as long as the mountains and rivers shall last, or the sun shine: whereupon we give this belt of wampum.

By command of their lordships. ALUREA DOPPLE.

Whitehall, September 9th, 1730.

O. K. OUKAH OULAH,
K. SKALELOSKEU KETAGUSTAH,
T. TATHTOWE,
C. CLOGOITTAH,
K. KOLLANNAH,
U. UKWANEEQUA.

These are to certify, Moytoy of Telliquo, that I have seen, perused, and do approve, all the articles contained in the above agreement, to which the Indians above mentioned have, by my advice, given their consent.

ALEX. CUMMING.

Paper C.

The answer of the Indian chiefs to the foregoing article, as it was delivered by Ketagustah, the 9th of September, 1730.

We are come hither from a dark, mountainous place, where nothing but darkness is to be found, but are now in a place where there is light.

There was a person in our country with us; he gave us a yellow token of warlike honor, that is left with Moytoy of Telliquo, and as warriors we received it. He came to us like a warrior, from you; a man he is; his talk was upright, and the token he left preserves his memory amongst us.

We look upon you as if the great King George was present, and we love you, as representing the great king, and shall die in this same way of thinking.

The crown of our nation is different from that which the great King George wears, and from that which we saw in the Tower; but to us it is all one, and the chain of friendship shall be carried to our people.

We look upon the great King George as the sun and our father, and upon ourselves as his children—for though we are red and you are white, yet our hands and hearts are joined together.

When we shall have acquainted our people with what we have seen, our children, from generation to generation, will always remember it.

In war we shall always be as one with you. The great King George's enemies shall be our enemies; his people and ours shall be always one, and shall die together.

We come hither naked and poor as the worm of the earth; but you have everything, and we that have nothing must love you, and can never break the chain of friendship which is between us.

Here stands the Governor of Carolina, whom we know. This small rope we show you, is all we have to bind our slaves with, and may be broken; but you have iron chains for yours; however, if we catch your slaves, we shall bind them as well as we can, and deliver them to our friends again, and have no pay for it.

We have looked around for the person that was in our country; he is not here; however, we must say he talked uprightly to us, and we shall never forget him.

Your white people may very safely build houses near us—we shall hurt nothing that belongs to them, for we are the children of one father, the great king, and shall live and die together.

Then lying down his feathers upon the table, he added: This is one way of talking, which is the same thing to us as your letters in the book are to you; and to you, beloved men, we deliver these feathers, in confirmation of all that we have said.

Paper D.

Treaty of alliance and commerce between Great Britain and the nation of the Cherokees in America, September 20th, 1730.

I. For as much as you, Scayagusta Oukah, chief of the city of Tastesteta, you Scaliloskeu Ketegustah, you Tathtowe, you Clo-

goittah, you Collanah and you Ukwaneequa, were sent by Moytoy de Telliquo, with the approbation of the whole nation of the Cherokees, in an assembly held at Nikossen the 14th of April, 1730, to Sir Alexander Cumming, Bart., in Great Britain, where you have seen the great King George, at whose feet Sir Alexander Cumming, by the express order of Moytoy, and the whole nation of the Cherokees, has laid the crown of your nation, the skulls of your enemies and the plumes of honor, as a mark of your submission; King of Great Britain, who has a tenderness for the powerful and great nation of the Cherokees, his good children and subjects, has authorised us to treat with you, and in this character we confer with you, as if the whole nation of the Cherokees, its old men, its young men, its women and children, were here present, and you ought to look upon the words which we say to you as if pronounced from the lips of the great king your master, whom you have seen; and we will consider the words which you shall speak to us as the words of your whole nation, delivered frankly and sincerely, to the great king; whereupon, we give you four pieces of striped serge.

II. Hear, therefore, the words of the great king, whom you have seen, and who has commanded us to tell you, that the English in all places and on both sides the great mountains and great lakes, are his people and children, whom he dearly loves; that their friends are his friends, and their enemies his enemies; that he is pleased that the great nation of the Cherokees has sent you hither to polish the chain of friendship which is betwixt him and them, betwixt your people and his people; that the chain of friendship betwixt him and the Indians of the Cherokees, is like the sun which gives light both here and upon the high mountains that they inhabit, and which warms the hearts both of the Indians and the English; and as we see no spots in the sun, so there is no rust nor dirt on this chain, and as the great king holds one end of it fastened to his breast, 'tis his intention that you should take up the other end of the chain, and fix it to the breast of Moytoy, of Telliquo, and to those of your wise old men, young captains and your people, in such manner that it may never be broke nor loosed; and hereupon we give you two pieces of blue cloth.

III. The king and the Indians of the Cherokees being thus united by the chain of friendship, he has ordered his children, the *Indians* of Carolina, to traffic with the Indians, and to furnish them with whatever commodities they want, and to build houses and to sow corn with speed, all the way from Charlestown to the Cherokees' town on the other side of the great mountains; for he would have the Indians and the English live together like children of one and the same family, whose great king is their dear father; and for as much as the great king has given his lands on both sides the great mountains to the English, his children, he grants the Indians

of the Cherokees the privilege to live where they please; and upon this we give you a piece of red cloth.

IV. The great nation of the Cherokees being at present the children of the great king of Great Britain, and he being their father, the Indians ought to consider the English as brothers of one and the same family, and ought always to be ready at the Governor's orders to fight against any nation whatsoever, either whites or Indians, that shall molest or attack the English; and hereupon we give you twenty muskets.

V. The Cherokee nation shall take care to keep the way of commerce clean, and that there be no blood in the road where the English white men travel, even though they happen to be accompanied by any other nation at war with the Cherokees; whereupon we give you two hundred weight of gunpowder.

VI. That the Cherokees nation shall not suffer any of its people to traffic with any other white men besides the English, and shall grant leave to no other nation to build any fort or habitation, or to sow corn in their country, either near any towns of the Indians, or on the lands belonging to the great king; and if anything like it be undertaken, you must give advice of it to the English Governor, and act as he shall order you for maintaining the right of the great king over the lands of Carolina; whereupon we give you five hundred weight of musket bullets, and the same quantity of common ball.

VII. That in case any negro slave runs away from his English master into the woods, the Indians of the Cherokees shall do what they can to apprehend him and bring him back to the plantation from whence he fled, or to the Governor's house; and for every negro which the Indians shall thus retake, they shall have a musket and a sentinel's suit of cloths; whereupon we give you a box full of vermillion, with 10,000 flints and 6 dozen of hatchets.

VIII. That if an Englishman has the misfortune to kill an Indian, the king or chief of the Cherokees shall first of all make his complaint to the English Governor, and the person who committed the murder shall be punished according to the laws, as much as if he had killed an Englishman; and in like manner if an Indian kill an Englishman, the guilty Indian shall be delivered up to the Governor, who shall punish him according to the English laws, and as if he was an Englishman; whereupon we give you twelve dozen of clasp knives, four dozen of kettles and ten dozen of bells.

IX. You are to know, that everything we have said to you are the words of the great king, whom you have seen; and to show that his heart is open and sincere to his children and friends, the Cherokees, and their whole nation, he puts his hand into this bandelier, which he demands may be received and shown to your whole nation, to their children and grand-children, to confirm what has been said to you, and to perpetuate this treaty of peace and friendship between the English and Cherokees, as long as the moun-

tains and rivers are in being, and as long as the sun shall shine; whereupon we give you this bandelier.

(Signed,) OUKAH WAH,
SCALILOSKEU KETAGUSTAH,
TATHTOWA,
CLOGOITAH,
KOLLANNAH,
UKWANEQUA.

By order of the commissioners at Whitehall, the 20th September, 1730.

ALLUREA DOPPLE.

And underneath:

'Tis for the security of Moytoy de Telliquo, that I have seen, examined and approved of all the articles contained in the above agreement, to which the said Indians have, by my advice, given their consent.

(Signed,) ALEX. CUMMING.

Paper F.

Talk to the Cherokees.

Augusta, 3*d*, 1773.

Friends and Brothers,—The business which occasions this meeting is now happily agreed upon by the warriors of both nations; and we are all acquainted with the description and extent of the lands which you have consented to cede to his majesty by way of satisfaction for your debts to your traders.

I am now, by his majesty's orders, to communicate to you a matter in which you, as well as other Indian nations, may think yourselves materially concerned.

You know that boundary lines dividing the lines ceded by you to his majesty in the different provinces from those reserved by you for your hunting grounds, have, at different times, been agreed upon, and marked by order of his majesty, that *cavils* and disputes about lands might thereby be avoided.

In the year 1771, you, the chiefs of the Cherokee nation, marked a line, dividing your hunting grounds from what you gave up to his majesty in the province of Virginia, and which fell in upon the head or source of Louisa river, and down the stream thereof to its confluence with the Ohio; and by an instrument of cession you relinquished all claims or pretensions to any lands to the northeastward of said line. Boundary lines were, in like manner, and for the same reason, agreed upon and marked in the northern department; and the river Ohio was agreed upon as a natural and perma-

nent boundary, as far as the claims of the northern tribes extended, or were suffered to extend; that is, to the confluence of the Conhoway with the said river; and all land which had until then belonged to, or been claimed by the northern tribes, were, by the treaty of Fort Stanwix, ceded to his majesty, in consequence of which, a great number of his majesty's white subjects settled upon the lands; and that order and regularity might be introduced amongst such a number of people, they preferred a petition to his majesty, praying that said country might be erected into a government, and civil magistrates appointed to govern and administer justice amongst them; which prayer his majesty has been graciously pleased to grant.

The boundaries of the new province are: "Beginning on the north side of the Ohio river, opposite to the mouth of Scioto; thence southerly through the pass in the Orcassioto Mountains, to the south side of the said mountains; thence along the south side of said mountains, north-easterly, to the fork of the Great *Conhaway* made by the junction of Greenbriar and the New river; thence along the said Greenbriar river, on the easterly side of the same, unto the head or termination of the north-easterly branch thereof; thence easterly to the Alleghany mountains; thence along the said Alleghany mountains to Lord Fairfax's line; thence along the same to the spring head of the north branch of the river Potomac; thence along the western boundary line of the province of Maryland, to the southern boundary line of the province of Pennsylvania; thence along the said southern boundary line of the province of Pennsylvania, to the end thereof; thence along the western boundary line of the said province of Pennsylvania, until the same shall strike the river Ohio, to the place of beginning."

I shall now show you the limits of said province, as marked upon this map, which will convey to you a clearer idea of its situation and extent.

I am further to acquaint you, that his majesty has strictly ordered and directed that no part of the land between the boundary line of said new province, and that marked by you in 1771, extending to the Ohio river, in consequence of the treaty of Lochaber, in 1770, shall be occupied by or granted to, any of his majesty's subjects. This must convince you of his majesty's justice, and resolution to adhere to his engagements with you, and to prevent, as far as possible, those intrusions upon your lands so often and justly complained of.

Paper I.

Instructions to the American governor, by the king.

His Majesty's instructions to all the Governors of his Provinces in America.

Whereas, the peace and security of our colonies and plantations

upon the continent of North America, does greatly depend upon a just and faithful observance of those treaties and compacts which have been heretofore solemnly entered into with the Indians by our royal predecessors, kings and queens of this realm: And whereas, notwithstanding the repeated instructions which have been, from time to time, given by our late royal grand father to the governors of our several colonies upon this head, the said Indians have made, and still continue to make great complaint, that settlements have been made, and possessions illegally, fraudulently, and surreptitiously obtained, of the said Indians:

And whereas, it has likewise been represented unto us, that some of our governors, or other chief officers of our said colonies, regardless of the duty they owe to us, and of the welfare and security of our colonies, have countenanced such unjust claims and pretensions, by passing grants of the lands so pretended to have been purchased of the Indians.

We therefore, taking this matter into our royal consideration, and being determined, upon all occasions, to support and protect the said Indians, their just right and possession, and to keep inviolalable the treaties and compacts which have been entered into with them, *do hereby* strictly enjoin and command, that neither any Governor, nor any Lieutenant Governor, President of the council, or Commander-in-chief of any of our said provinces, do, upon any pretence whatsoever, upon pain of our highest displeasure, and of being forthwith removed from their or his office, pass any grant, or grants, to any person whatsoever, of any lands within or adjacent to the territories possessed or occupied by the said Indians, or the property or possession of which has, at any time, been reserved to or claimed by them; and it is our further will and pleasure, that our Governors publish proclamations in our name, strictly enjoining and requiring all persons whatever, who may either wilfully or inadvertently have seated themselves upon any lands, so reserved to, or claimed by the said Indians, without any lawful authority for so doing, forthwith to remove therefrom; and in case they shall find, upon strict enquiry to be made for that purpose, that any person or persons do claim to hold or possess any land within our said provinces, upon pretence of purchases made of the said Indians, without a proper license first had and obained, either from us, or any of our royal predecessors, or any person acting under our or their authority, they are forthwith to cause a prosecution to be carried on against such person or persons, who shall have made such fraudulent purchases, to the end that the land may be recovered by a due course of law.

And whereas, the wholesome laws, which have at different times been passed in several of our said colonies, and the instructions which have been given by our royal predecessors, for restraining persons from purchasing lands from the Indians, without a license for that purpose, and for regulating the proceedings upon such

purchases, have not been duly observed: It is therefore our express will and pleasure, that when any application shall be made to any Governor for license to purchase lands of the Indians, they do forbear to grant such license, until they have first transmitted to us, by our Commissioners for Trade and Plantations, the particulars of such application, as well in respect of the situation, as the extent of the lands so proposed to be purchased, and shall have received our further directions therein; and it is our further will and pleasure, that they do forthwith cause these our instructions to them to be made public, not only in all parts of our said provinces, inhabited by our subjects, but also amongst the several tribes of Indians, to the end that our royal will and pleasure in the premises may be known, and that the Indians may be apprised of our determined resolution, to support them in their just right, and inviolably to observe our engagement with them.

(Signed,) GEORGE REX.
By JOHN STEWART, Esq.
His majesty's agent, and Superintendent of the Southern District of America.

The great king's most gracious intentions towards all the Indians, his children, contained in the above instructions, being sent from London in a letter signed by his own hand, and sealed with his own seal, are, pursuant to his majesty's express commands, communicated to all the nations of Indians.

Given under my hand, and seal at arms, at Charlestown, this fourth day of July, in the year of our Lord one [L. S.] thousand seven hundred and sixty-three, and of his majesty's reign the third.

JOHN STUART.

Dep'on of Elijah Turner.

The deposition of Elijah Turner, taken before John F. Harriss, Esq., one of the justices of the County Court of McCracken County, in the Commonwealth of Kentucky, on the 29th day of October, in the year 1840, at the office of Thomas S. Harlow, police judge of Paducah, in the town of Paducah, in the county aforesaid, to be read as evidence, in a certain suit depending in the Circuit Court of the United States, for the eighth circuit and Kentucky district, holden in Frankfort, wherein Robert Porterfield is complainant, and M. S. Clark, Wm. P. Clark, Geo. R. H. Clark, Jefferson K. Clark, A. Smith, John McElyea, George Woolfolk, Charles C. Russell, Robert Enders, James McPherson, Valentine Owen and James E. Husbands, are defendants.

The said deponent being first carefully examined and cautioned, and sworn to tell the whole truth, doth depose and say, that he

lives a greater distance from the said town of Frankfort than one hundred miles.

Questions by Complainant's Counsel.

State how long you have resided in this section of the country, from your best recollection.

Answer. I think I have been here about seventeen years last March.

By same. State what was then considered the mouth of the Tennessee river; whether at the lower or upper end, of the Island?

Answer. I considered that the lower end of the Island was the proper mouth, as the channel was always there, and I have seen it dry at the upper mouth at the head of the Island, and I always heard it called the upper and lower mouth.

By same. Do you remember where Gen'l Clark's corner, at the mouth of Tennessee, was considered to stand; whether at the lower or upper end of the Island; describe the corner as you recollect it.

Answer. I have seen a place at the lower mouth, said to be the corner of Clark; I saw a rock standing at the root of a white oak tree, said to be the corner of Clark; this was before the town of Paducah was laid off; the ground, rock and tree, *has* all washed into the river long since.

By same. What have you always understood by the term *drowned lands;* were the lands, which were subject to overflow, considered very valuable at an early day?

Answer. My understanding is, all lands overflown by high water was drowned lands. The lands subject to overflow *was* not considered valuable then, like they are now.

Questions by Defendant's Counsel.

When were you first acquainted with Clark's survey, as spoken of above?

Answer. I think it was in 1822 and 1823.

By same. Did you then reside on what was called Clark's claim?

Answer. I did.

By same. How far from the present site of Paducah?

Answer. The first year I resided about four miles below, and about a half mile from the river; the next year I lived where John McElyea now lives, about a mile and a quarter below said town.

By same. What was the first creek, emptying into the Ohio river below Paducah, called when you first knew it?

Answer. It was called Perkin's creek.

By same. Were you acquainted with James Martin, who lived in Paducah in 1822 and 1823?

Answer. I was.

By same. Was he, or was he not, the reputed agent of Gen'l Clark ?

Answer. It was so said; but I do not know of my own knowledge.

By same. Did, or did not, James Martin inform you, he was agent and tenant of Gen'l Clark, and forbid you from trespassing on the land?

Answer. He did not.

By same. What was the reason of your moving off the land, from where McElyea now lives?

Answer. Because I had a better situation on the other side of the river, did not like my partner James Davis, in cutting and selling wood, and because James Martin, as agent and tenant for Gen'l Clark, got out a writ against me for cutting and selling wood, and John McElyea as sheriff came to serve it on me, and I did not want to be pestered, and therefore moved; and my calculation was to move any how.

By same. Was the place you then occupied between the mouth of Perkin's creek and Paducah?

Answer. It was.

By same. Who showed the corner, spoken of by you as Clark's corner?

Answer. Joseph Daniels showed to me, and I heard it spoken of by others as such.

By same. When did Joseph Daniels show it to you?

Answer. I cannot tell exactly when, but it was *but* before the town of Paducah was laid off.

By same. Did you examine the white oak, at the root of which the rock was planted, to see if it was marked as a corner tree?

Answer. I do not recollect whether it was marked or not; I do not recollect of examining it.

By same. What was the size of the white oak?

Answer. About 18 inches in diameter.

By same. Would you consider lands on which a crop of Indian corn can be raised annually, as drowned lands?

Answer. I consider where the Ohio overflows as drowned lands.

By same. Do you not know it as a fact, ever since you knew this country, that the lands subject to overflow between the mouth of Perkin's creek and Paducah, have been under annual cultivation in crops of Indian corn?

Answer. I have seen crops on it every year since.

By same. Does it not frequently occur for several years together that it does not overflow?

Answer. I do not recollect but two years, but what it has overflowed some part of the bottom between Perkin's creek and Paducah.

By same. Whether is the distance from the head of the Island, to the point land at the junction of the Ohio and Tennessee,

which was called the upper mouth, or the distance from the lower point of the Island, which you say was the lower mouth, to the main Kentucky shore, *is* the greater distance?

Answer. I would say from the point of land, to the Island or upper mouth, was the greater distance.

By same. In the month of May, does not water usually cover the whole space of land between the head of the Island, and point of land *what* you call the upper mouth?

Answer. I would say it does in high water.

By same. Will it not cover the whole space, before the river is out of its banks, or in a usual spring stage of water.

Answer. Yes, I think it will.

By the same. Did you ever know a May, when the whole space was not covered?

Answer. I cannot say whether or not.

By Complainant's Counsel.

Did you ever hear Perkins' creek called by any other name?

Answer. I did not.

By same. To which county does Tennessee Island belong?

Answer. I do not know.

And further this deponent sa*y*eth not.

ELIJAH TURNER.

It being night, the further taking of these depositions is adjourned until to-morrow morning, 8 o'clock, A. M.

JOHN F. HARRIS.

Depositions continued, October, 30th 1840.

Nancy Daniels being of lawful age, being first duly sworn, deposeth and sa*y*eth.

Questions by Complainant's Counsel.

State about what time you came here?

Answer. In March, 1822.

By same. Under whom did your husband have a lease?

Answer. Under James Martin, Gen'l Clark's agent.

By same. For what length of time was that lease given?

Answer. It was my understanding for seven years.

By same. Was that a written lease?

Answer. I suppose it was a written lease, as that was the way we took leases.

By same. Do you remember how long it was, before Mr. Daniels took a lease from Gen'l Porterfield, after you came here?

Answer. It was about two years.

By same. Was Mr. James Martin, the agent for Gen'l Clark, residing in the neighborhood at that time?

Answer. He was.

By same. How long did you live on the land, after you took a lease from Gen'l Porterfield?

Answer. I do not recollect. Mr. Daniels transferred the lease to two young Mr. Adams's, and they were living with Mr. Luke Bryant, at the time they were dispossessed by Gen'l Clark.

By same. When Mr. Daniels took a lease from Gen'l Porterfield, was any objection made by Gen'l Clark's agent?

Answer. I do not recollect. Gen'l Porterfield's agent was at our house, and said if he did not take a lease, suit would be commenced to dispossess him.

By same. How far is it from where you lived at the mouth of Tennessee, to where you removed after transferring the lease to Adams?

Answer. About one mile and a half.

By the same. Do you recollect whether Mr. Daniels retained the piece of ground rented him for a ware-house, when he transferred his lease?

Answer. I do not recollect.

By same. Do you know whose land you settled on when you removed from the mouth of Tennessee?

Answer. Gen'l Clarke's; as we took a lease from his agent.

By same. Was that a written lease?

Answer. It was a written lease.

By same. Do you recollect at what time this lease was given?

Answer. I do not recollect; but shortly after the Adams' and Bryant *was* dispossessed.

By same. How long did you live on that place, it being the place where John McElyea now lives?

Answer. I do not recollect.

By same. Do you remember in what year you removed back to the mouth of Tennessee? was it before or after the laying out of the town of Paducah?

Answer. I do not recollect; but it was before the town was laid off; when we returned, it was under Gen'l Clark's agent.

By same. Did you procure a written lease under Gen'l Clark's agent?

Answer. I do not recollect, but I think it was.

By same. Do you recollect in what year Gen'l Clarke gave you lot No. 66?

Answer. I think it was in the spring of 1833; but the deed of record will show.

By defendants. Did or not your husband, Joseph Daniels, at the time Herring Porterfield's agent was urging him to take a lease from Porterfield of the place he then occupied, inform said Herring that he was the tenant of Clark, and holding possession under Clark's claim?

Answer. He did.

By same. Did or not your husband for some time hold out and refuse to take a lease under Porterfield?

Answer. I do not know how long, but he was unwilling to take a lease for some time.

By same. Did not Herring, before your husband would take a lease from Porterfield, threaten to sue him and turn him out of possession?

Answer. He did.

By same. Was it not a matter of consultation between your husband and yourself, that it would be better to take a lease under Porterfield than to be turned out of possession, at that season of the year, until you could see Clark's agent; that he might take steps to protect you in the possession of the first lease under Clark?

Answer. It was.

By complainant's counsel. Do you recollect of hearing any talk of Gen'l Porterfield's suing Gen'l Clark, between 1830 and 1835?

Answer. I have heard some talk of suit being brought, but when or what, I do not recollect.

By same. You have stated when Mr. Herring applied to Mr. Daniels to take a lease under Gen'l Porterfield, Mr. Daniels objected, stating he held under Gen'l Clark; did or did not Mr. Daniels tell Gen'l Porterfield's agent, that he had a written lease from Gen'l Clark, and did he or did he not shew the same to Gen'l Porterfield's agent?

Answer. He told him he had a lease under Gen'l Clarke, but whether he showed it or not, I do not know.

And further this deponent saith not.

her
NANCY ⋈ DANIELS.
mark.

The further taking of these depositions is adjourned until tomorrow morning, 10 o'clock, A. M.

JOHN F. HARRISS.

Depo'n of Frs. T. Taylor.

Depositions continued 31st October, 1840.

Francis T. Taylor, of lawful age, being first duly sworn, deposeth and saith.

Question by complainant's counsel. State how long you have resided in Kentucky, west of Tennessee river.

Answer. I moved here in the spring of 1822, and have resided here ever since. I arrived at the Iron Banks in Hickman county, some time in April, 1822, and have resided in that neighbourhood ever since.

By same. When were you appointed military surveyor for the Virginia State line?

Answer. Some time in January or February, 1836: but my commission will show.

By same. Do or *does* not the books in your office show, that Gen'l George Rogers Clarke was surveyor for the Virginia State line as early as 1784, and that he actually made surveys for them at that time?

Answer. I have taken a memorandum from the books which show the surveys as signed by him as surveyor, as early as the 12th December, 1784, till the 10th of August, 1788. They were signed by George Rogers Clark, as surveyor; also an alphabet to the entry book of Military lands south of Green river, commencing the 2d August, 1784, and signed by George Rogers Clark, as surveyor.

By same. Does or does it not appear from the books in your office that Gen'l Porterfield's entry, No. 317, was removed by superintending officers on the 9th of August, 1784, and placed where it now stands, within what is called Gen'l Clark's survey?

Answer. It appears from the entry recorded in my office, that Gen'l Porterfield's entry No. 317, was amended; and as surveyed, lies in Gen'l Clark's survey.

By same. What has been your general understanding, and, as far as you know, the understanding of the county, by the term drowned lands?

Answer. My understanding is, that it is such lands as are generally overflowed by high freshets in the river.

By same. Have you heard of any other lands on the Kentucky side, denominated drowned lands, or generally spoken of as drowned lands, except such as are overflowed?

Answer. I have not.

By same. Were the lands that were subject to inundation regarded as valuable at an early day?

Answer. They were not.

By same. Was it or was it not the object of persons in settling this country, at an early day, to procure lands free from inundation?

Answer. It was generally the case.

Question by defendants. Do you find, on your books, any Military surveys south-west of Tennessee, made by George Rogers Clark?

Answer. I do not.

By same. Are not all the surveys referred to by you as made by Clarke, made in what is called the Green river country?

Answer. I would suppose they were all made in the Green river country.

By same. Will you name some of those surveys?

Answer. One in the name of John Nelson, No. 437, and one in the name of S. Tinsley.

By same. Do you know that George Rogers Clarke ever took upon himself the duties of superintendent of the Military lands under the act of Virginia?

Answer. I do not.

By same. Do you know that George Rogers Clarke superintended the location of Porterfield's lands south-west of Tennessee?

Answer. I have no knowledge of it; all I know is from the face of the entries themselves.

By same. When *was* the first Military surveys made south-west of Tennessee?

Answer. In the spring of 1821.

By same. On the 5th August, 1784, at the date of Porterfield's entry, No. 164, do you know of any creek south-west of Tennessee river, emptying into the Ohio river, that was at that day known as Delaware creek?

Answer. I do not know, as it was sixteen years before I was born.

By same. At the date of the entry above spoken of, can you state that the creek on which Portersfield's survey of 1200 acres, was an object of notoriety under the name of Delaware creek?

Answer. I cannot.

By same. Did you ever, by actual survey, lay down James Montgomery's entry, No. 170, and Thomas Clay's, No. 212, and the entrys and objects on which Thomas Clay's entry depends?

Answer. I never did by actual survey.

By same. Did you ever lay down by actual survey, either of the surveys of Biddle and Curries, lying south-west and binding on Perkins' creek, which is called for by Porterfield's entry, No. 317?

Answer. I never surveyed either of them.

By same. Can you state what was considered drowned lands by surveyors and land jobbers in Kentucky, about the years 1779, 1780 and 1781?

Answer. I cannot.

By same. Would lands subject to occasional overflow by the Ohio, and on which annual crops of Indian corn are raised, and farms situated, be estimated as drowned lands by persons generally?

Answer. It is my impression it would.

By same. Do you know that such lands were considered as drowned lands in 1779, 1780 and 1781 by surveyors and land jobbers?

Answer. I do not.

By complainant's counsel. Are you or are you not convinced from the entries and surveys in the books from your office, from its geographical position, and from actual inspection, that the creek now generally known as Perkins' creek, is the identical creek called for by Porterfield's entry and surveys as Delaware creek?

Answer. I am.

By same. Have you or have you not heard that the creek now called Perkins' creek, was once called Delaware *called*; and

that its present name was derived from a man by the name of Perkins, who settled on it at an early day?

Answer. I have.

By same. Have you or have you not the certified copy of two surveys made by Green Clay, for George Rogers Clark, one purporting to be made the 7th of June, 1784, and the other purporting to be made the 8th of June, 1784; the one containing 36,962 acres, and the other, 37,000 acres?

Answer. I have.

By same. Do you believe it possible for these two surveys to be made in two days?

Answer. I should suppose not.

By defendants. By whom did you hear that Perkins' creek was once called Delaware creek, and when did Perkins settle on that creek?

Answer. A man by the name of Ferguson told me that it was once called Delaware creek, and a man by the name of Perkins settled on it in an early day.

By same. Did you ever hear it called by the name of Delaware creek by any other person except Ferguson?

Answer. I have also heard it called Delaware creek by John E. Taylor, Richard Taylor, Jr., and William Herring.

By same. Did either of the persons spoken of above reside in this country, and if so, what time did they reside here; and were they acquainted in the country before they resided here, and what distance from Perkins' creek?

Answer. Richard Taylor and John E. Taylor, in Hickman county, from 1822 until 1835. They were acquainted with country from 1821; and William Herring resided in Hickman about 18 months or two years from 1824, and about 40 miles from Perkins' creek.

By same. Whether it would not be reasonable for two surveys above spoken of, G. R. Clarke to be made, one beginning on the 5th and ending on the 7th, and the other beginning on the 7th and ending on the 8th?

Answer. I should suppose not.

And further this deponent saith not.

FRS. T. TAYLOR.

Depo'n of Wm. S. Herring.

STATE OF ILLINOIS, *Tazewell c'ty.*

The deposition of Wm. S. Herring, of lawful age, taken before me, Middleton Tackaberry, one of the Justices of the Peace for Tazewell county, in the town of Pekin, on the 23d April, 1841, to be read as evidence in a suit in equity now depending in the Circuit Court of the United States, for the District of Kentucky, in which Robert Porterfield is plaintiff, and Meriwether L. Clark, William

P. Clarke, Jefferson K. Clark, George R. H. Clarke, heirs of William Clarke, dec'd, George Woolfolk and others, are defendants.

William S. Herring, a witness produced on behalf of the plaintiff, being duly sworn, examined and cautioned, to testify to the whole truth, deposeth and saith:

I reside in the county of Mason, State of Illinois, and more than one hundred miles from Frankfort, State of Kentucky, the seat of the said suit.

Question by J. B. Johnston, agent for plaintiff. State whether you were not present at the mouth of the Tennessee river, in 1824, and assisted in surveying two tracts of land for Gen'l Robert Porterfield, which lands now include the present site of Paducah?

Answer. I was.

State whether or not great pains were taken in surveying those lands, and whether or not they were surveyed with great accuracy.

Answer. Great pains were taken, and they certainly were surveyed with great accuracy, from the manner in which the lines closed.

Question by same. Were you not deputy under Richard Taylor, the surveyor, who made the survey?

Answer. I was.

Question by same. State whether you recollect, or not, that John S. Herring, the agent of Gen. Porterfield, gave leases to several persons then living on the land.

Answer. I do: for I wrote the leases myself, which have this day been shown to me, and are in my hand-writing, and to one of which, viz: the one to Hickerson, I am a subscribing witness.

Question by same. State whether or not these persons were squatters, and holding under no claim.

Answer. Yes; that is my impression, from my best recollection.

Question by same. State whether you do, or do not, distinctly recollect, that it was the object of John S. Herring, your nephew, the agent of Gen. Porterfield, to give leases to persons who hold under no adverse claim, and what were the reasons which he assigned for giving leases to such persons.

Answer. I do distinctly recollect it, and the reasons he assigned were, that leases to persons holding under an adverse claim would be invalid, or at least be productive of difficulty and trouble.

Question by same. State whether or not your nephew, John S. Herring, has not been dead several years?

Answer. Yes; he died some time in the winter of 1824, '5.

Question by same. Do you recollect that when the lease to Hickerson was given, to which you are a witness, *that* any thing was said to them, or at any time before, of Hickerson's being a tenant of Clark or any other person.

Answer. I have no recollection of any thing of the kind passing, but it is my impression from my best recollection, that he was a squatter.

Question by same. How long were you at or near the mouth of Tennessee river?

Answer. About a year: and further this deponent sayeth not.

WM. S. HERRING.

I do hereby certify, that the foregoing deposition of William S. Herring was duly taken, sworn to and subscribed by the said William S. Herring in my presence, at the time and place in the caption stated. That no notice was given to the defendants of the time and place of taking said depositions, because they reside more than one hundred miles distant from the place of taking *them*, and have no known agent, or attorney within that distance; that the deposition *are* wholly written in my own hand-writing: that I am in no manner interested in the event of the suit, in which the depositions *are* taken, and am not of counsel or attorney to either of the parties.

In testimony whereof, I have hereunto subscribed my name, this twenty-fourth day of April, A. D., 1841.

MIDDLETON TACKABERRY, *J. P.* [L. S.]

STATE OF ILLINOIS, *Tazewell County, ss.*

I, J. H. Morrison, clerk of the Tazewell County Commissioners' Court, do hereby certify, that Middleton Tackaberry, whose name appears to the foregoing certificate, was, on the day of the date thereof, an acting Justice of the Peace for said county, regularly commissioned and qualified, and as such, full faith and credit ought to be given to all his official acts.

Given under my hand and seal of office, at Tremont,
[L. S.] the 24th day of April, 1841.

JOHN H. MORRISON, *Clk.*

Deposition of William Stewart.

The deposition of William Stewart, taken before Alexander Hull, one of the Judges of the County Court of Logan County, in the Commonwealth of Kentucky, on the 21st day of August, in the year 1841, at the law office of James W. Davidson, Esq., in the town of Russellville, in the county aforesaid, to be read as evidence in a certain suit in chancery, depending in the circuit court of the United States, for the eighth circuit and Kentucky district, holden in Frankfort, wherein Robert Porterfield is complainant, and M. L. Clark, George R. H. Clark, Jefferson K. Clark, heirs of William Clark, deceased, and George Woolfolk, John McElyea, and others are defendants. The said deponent being first carefully examined and cautioned, and sworn to tell the whole truth, doth depose and say, that he lives a greater distance from the town of Frankfort than one hundred miles. Furthermore he saith, in answer to questions:

Question by agent for defendants. State whether or not, you are a surveyor; if yes, how long, and where you have been in the habit of surveying; how old you are, and whether or not there is to your knowledge a distinction taken between overflowed and drowned lands; and if so, what that distinction is.

Answer. I have been surveying in the Green River country between forty and fifty years; I am now in my sixty-ninth year; from information, &c.; and as for the difference between drowned lands and lands overflowed, &c., I have viewed in this way, such as ponds, lakes, or bayous, we would call drowned lands, and bottom lands, which are only covered by water, in time or after heavy rains, &c.; those I call overflowed lands, &c.; *thare* being that difference, of course it might have different names for distinction, &c.; and further this deponent saith not.

WM. STEWART.

I, Alexander Hull, one of the Justices of the Peace of the Commonwealth of Kentucky, in and for the County of Logan, duly commissioned, sworn and acting as such, and by law and by virtue of my said commission, one of the Judges of the county court of said county, and acting as such, do certify, that at the request of John B. Temple, acting as agent and attorney for the said defendant, I caused the above named William Stewart, deponent in the foregoing deposition, to come before me, at the time and place in the caption stated, because the said witness resides a greater distance than one hundred miles from Frankfort, the place of holding the said court of the United States, as is stated; and I believe I did not cause any notice to be given to the adverse party, of the time of taking this deposition, because the said adverse party does not, as I know or believe, reside within one hundred miles of the place of taking the same, nor has said party any agent or attorney, known to me, within the distance; that the said witness was by me carefully examined, cautioned and sworn, then and there to testify the whole truth; that the answer to the interrogatories in said deposition was wholly reduced to writing in my presence by the deponent, and that the caption and foregoing part of the deposition was read and explained to deponent in my presence, and that he then and there, in my presence, subscribed the same; that I am not council or attorney for either of the parties, or interested in the event of the cause; all which is certified to said court, as the cause wherefor this deposition is taken and for the manner it is done.

Given under my hand, the day and date in the caption written.

A. HULL, *J. P. L. C.*

Deposition of William Powers.

STATE OF KENTUCKY, *M'Cracken County, ss.*

The deposition of William Powers, taken before me, *Lemuel*

Billington, a Justice of the Peace in and for the county of M'Cracken, and one of the Judges of the county court, of the County of M'Cracken, in the Commonwealth of Kentucky, on the 16th day of April, in the year 1841, at the dwelling house of Susan Mosby, in the county and State aforesaid, to be read as evidence in a certain suit depending in the circuit court of the United States for the 8th circuit, Kentucky District, to be holden at Frankfort, Kentucky, wherein Robert Porterfield is complainant, and Meriwether S. Clark and others are defendants. The deponent being of full age, and first carefully examined, cautioned and sworn, to tell the whole truth, doth depose and say, that he lives a greater distance from said town of Frankfort than one hundred miles; and on being interrogated furthermore, he saith:

Question 1st by defend't. How far do you live from Frankfort, Kentucky?

Answer. I think its is about three hundred miles.

Q. by defendant. Did you witness the lease executed to James Martin, by D. Fitzhugh, agent for William Clark, herewith exhibited and marked (A.), dated 25th day of June, 1819, and *assigned* by James Martin and *and* said D. Fitzhugh, agent for said William Clark: did they *assign* their names to said lease in your presence, and acknowledge the same?

Answer. I witnessed the lease above mentioned, and James Martin and D. Fitzhugh, agents for William Clark, both *assigned* their names, and acknowledged it on the 25th day of June, 1819, in my presence.

Question 2d by def't. Did James Martin have a settlement at the mouth of Tennessee river, and keep a wood-yard at that place in the years 1819, 1820, 1821, 1822, 1823 and 1824; did John John Martin live on the premises, and attend to it for him?

Answer. He did.

Question by defend't. Is the land at the mouth of the Tennessee river in the bounds of Clark's 36,962 acre survey, as mentioned in Martin's lease?

Answer. It is; and this deponent further saith not.

WILL. POWERS.

STATE OF KENTUCKY, *M'Cracken County, ss.*

I, *Lemuel* Billington, one of the Justices of the Commonwealth of Kentucky, in and for the County of M'Cracken, duly commissioned and sworn, and acting as such, and by law, and by virtue of my commission, one of the presiding Judges of the county court, in and for the county of M'Cracken, and State of Kentucky aforesaid, and by virtue of my commission as such, do certify, that at the request of the defendants in said cause, I caused the above named William Powers, deponent in the foregoing deposition, to come before me, at the time and place in the caption stated, because the said witness, William Powers, resides a greater distance than one

hundred miles Frankfort, the place of holding said court of the United States, *and is stated;* I did not cause any notice to be given to the adverse party, of the time and place of taking this deposition, because the said adverse party does *does* not, as I know or believe, reside within one hundred miles of the place of taking the deposition, nor has said party any agent or attorney known to me within that distance; that said witness, William Powers, was by me carefully examined, cautioned and sworn, then and there to testify the whole truth; that the said deposition was wholly reduced to writing by me, in the presence of the said witness, and he then and there in my presence subscribed the same; that I am not council or attorney for either of the parties to the cause, or interested in the event of the same; all which is certified to said court as the cause whereof this deposition is taken, and for the manner it is done.

P. BILLINGTON, *J. P. M. C.*

Lease—Wm. Clark to James Martin.

The following is the lease referred to in the foregoing deposition of William Powers, to wit:

This indenture, made and entered into the 25th day of June, 1819, between William Clark, of St. Louis, in the Missouri Territory, of the one part, and James Martin, of the county of Livingston, in the State of Kentucky, of the other, witnesseth: that whereas, the said William Clark is the owner of thirty-six thousand nine hundred and sixty-two acres of land, entered, surveyed and patented to George Rogers Clark, as reference to the register's office Kentucky will at large appear: Beginning at the mouth of Tennessee river, at three maples, two ashes and a hackberry; thence S. 16° W. 1,280 poles, to two white oaks and 3 maples; thence N. 74 W. 3,840 poles, to 5 black oak saplings; thence N. 16° E. 1,800 poles, to the bank of the Ohio river, at a walnut, elm, and hoop-wood; thence up the river to the beginning. He, the said William Clark, hath this day leased, and by these presents, doth to farm let unto the said James Martin, and to his heirs and assigns, the said 36,962 acres of land, as above described, for and during the term of seven years, from the date hereof; and the said James Martin, on his part, doth covenant and agree with the said William Clark, that him or his heirs or assigns will keep possession of the said land, and that he or they shall, at the expiration of the said term of seven years as aforesaid, deliver up peaceable possession of the said land, to the said William Clark, or to his heirs or assigns, with a good hewn log-house, and other out houses which may be necessary, and at least ten acres of cleared ground, under a good and lawful fence; and the said William Clark hereby reserves to himself the right and privilege of disposing of any part of said land, leased as aforesaid, at any time during said lease, except that

part on which the said Martin now lives, with four hundred acres, to include his house and improvement; and the said Martin agrees, not to permit any waste of timber on said land.

In witness whereof, the said *partners* have hereto set their hands and seals, the day and date above written.

WILLIAM CLARK, [L. S.]
By his agent, D. FITZHUGH.
JAMES MARTIN. [L. S.]

Witness,

A. C. FITZHUGH,
JOSEPH NOSLY,
WILLIAM POWERS.

STATE OF MISSOURI, *County of Saint Louis, ss:*

Deposition of Wm. Milburn.

The deposition of William Milburn, taken before me, M. P. Leduc, the Senior or presiding Judge of the County Court of the County of Saint Louis, in the State of Missouri, on the fifth day of March, 1841, at the residence of said judge, in the city of Saint Louis, in the county of Saint Louis aforesaid, to be read as evidence in a certain suit, depending in the Circuit Court of the United States, for the eighth circuit, Kentucky district, to be holden at Frankfort, Kentucky, wherein Robert Porterfield is complainant, and Meriwether L. Clark and others are defendants.

The deponent being of full age, and first carefully examined and cautioned, and sworn to tell the whole truth, doth depose and say, that he lives a greater distance from the said town of Frankfort than one hundred miles; being interrogated furthermore, sayeth:

Question 1, by defendants.—Where is your residence, and what is your present profession and pursuit in life?

Answer.—My residence is in the city of Saint Louis, in the State of Missouri, and I am at present Surveyor General of the lands of the United States, in the States of Illinois and Missouri. I was first appointed to said office in March, 1833, and entered on the discharge of the duties thereof in April of that year; I was engaged to survey public lands of the United States, in Missouri, under the United States Surveyor General, in the fall of 1816, and I have, with the exception of a few months in 1817, been constantly employed ever since, either as surveyor of the lands of the United States, or clerk in the office of the United *United* States Surveyor General for this district, or else Surveyor General as before stated; about seventeen years of said time as principal or chief clerk in the office aforesaid.

Question 2d by the defendants.—What is the general accepta-

tion or meaning of the term "*drowned lands*," as used by surveyors and others, within your knowledge?

Answer.—It is that land which, for want of the requisite facilities of drainage, is rendered totally unfit for cultivation.

Question 3d by the defendants.—Would those lands which are subject to overflow by occasional spring freshets, but which are brought into annual cultivation, be considered and called drowned lands, in the usual acceptation of the term?

Answer.—Land, that is subject to overflow, either periodically (as by the spring freshets) or at irregular seasons, and which after being flooded is quickly drained through the natural outlets, and freed from the redundant water, so as to become at an early day in a fit condition for the labours of the cultivation, is not considered or called drowned land; and further this deponent sayeth not.

WILLIAM MILBURN.

STATE OF MISSOURI, *County and city of St. Louis, ss:*

Sworn and subscribed to before me, on the day and at the place first above written.

M. P. LEDUC,
Presiding Judge County Court,
St. Louis county, Missouri.

STATE OF MISSOURI, *County of Saint Louis, ss:*

I, Henry Chouteau, Clerk of the County Court within and for the county of Saint Louis, in the State of Missouri, which is a court of record, having a seal, do certify, that Mavy Philip Leduc, Esquire, whose name is subscribed to the precedeing certificate or attestation of deposition, was on the fifth day of March, one thousand eight hundred and forty-one, and previous thereto, has since continued to be, and now is presiding justice of said county court, duly appointed, commissioned and qualified and acting in that capacity, and that full faith and credit are due to all his official acts as such; and I further certify, that the signatures to said certificates are known to me to be genuine.

In testimony whereof, I hereto set my hand, and affix the seal of said county court at office, in the city [L. S.] of Saint Louis, in the county and State aforesaid, this sixth day of March, in the year of our Lord one thousand eight hundred and forty-one.

HENRY CHOUTEAU, *Cl'k.*

STATE OF TENNESSEE, *Davidson county:*

Deposition of Gen'l Andrew Jackson.

Be it remembered, that on this twenty-fifth day of October, in

the year 1841, I, John A. Shute, an acting Justice of the Peace, and one of the Judges of the County Court of the county of Davidson and State of Tennessee, caused and called General Andrew Jackson to be and personally appear before me, at in the county and State aforesaid, to testify and the truth to say, in behalf of the defendants in a certain matter of controversy, now depending and undetermined in the Circuit Court of the United States, for the eighth circuit Kentucky district, to be holden at Frankfort, Kentucky, wherein Robert Porterfield is complainant, and Meriwether L. Clark and others, heirs of Wm. Clark, deceased, and others are defendants, upon the equity side of said court. The said Andrew Jackson being near the age of seventy-four years, and being first by me cautioned and sworn to testify the truth, the whole truth and nothing but the truth, in the matter of controversy aforesaid. I did carefully examine the said Andrew Jackson, and he thereupon deposed and said as follows:

Question by defendant.—How long have you resided and been acquainted in the west?

Answer.—Since the year seventeen hundred and sixty-eight.

Question.—Have you or have you not had a good opportunity to become acquainted with the Indians—their country, territorial limits, &c., in the States of Tennessee, Alabama and the south-western part of Kentucky?

Answer.—I have, in consequence of being appointed commissioner several times to treat with the Indians.

Question.—State to what nation or tribe of Indians that portion of Kentucky lying below and adjoining the mouth of Tennessee river, running down *to* the Ohio to its mouth, and down the Mississippi to the Tennessee line, forming what are now Hickman and McCracken counties, in the State of Kentucky, belonged, from your earliest knowledge of it, and how far does that knowledge extend back?

Answer.—It belong to the Chickasaw Indians, and that knowledge extended as far back as seventeen hundred and ninety.

Question.—Have you ever heard, or do you know that the Cherokees ever lost claim to the land described in the last question?

Answer.—I never have heard them lay claim to any of the land in the last question, either in conversation with the chief or otherwise.

And further this deponent saith not.

ANDREW JACKSON.

And I, the said John A. Shute, an acting Justice of the Peace, and one of the Judges of the County Court of the county of Davidson and State of Tennessee aforesaid, do certify, that the deposition of the said Andrew Jackson was taken as aforesaid, because he, the witness, lives at the Hermitage, in the county and State aforesaid, a greater distance than one hundred miles from Frankfort, the place of trial of the suit or matter of controversy aforesaid;

and I caused no notification of the time and place of taking said deposition, to be made out and served upon Robert Porterfield, the adverse party, or his council, to be present at the taking of said deposition, and to put interrogatories if he saw proper; because neither he, the said Robert Porterfield, nor his counsel, live within one hundred miles of the place of caption to the deposition, being the same is taken (in Davidson county aforesaid;) and I do further certify, that the deposition was taken down by me, from the statement of the witness made in my presence, after being reduced to writing; and I do further certify, that I am not of council or attorney to either of the parties aforesaid, or interested in the cause or controversy aforesaid.

In testimony, I have hereto set my hand and seal, the day and year first before mentioned.

JOHN A. SHUTE. [L. S.]

STATE OF KENTUCKY, *McCracken County, sct:*

Deposition of Robert Fletcher.

The deposition of Robert Fletcher, taken before me, William Jones, a Justice of the peace in and for the county of McCracken aforesaid, and one of the Judges of the County Court of said county of McCracken, taken on the 15th day of April, 1841, at the house of George Woolfolk, in the town of Paducah, in the county of McCracken aforesaid, to be read as evidence in a certain suit depending in the Circuit Court of the United States, for the 8th circuit, Kentucky district, to be holden at Frankfort, Kentucky, wherein Robert Porterfield is complainant, and Meriwether L. Clark, George R. H. Clark, Jefferson K. Clark, heirs of William Clark, deceased, and George Woolfolk, John McElyea and others, are defendants. The said Robert Fletcher being of lawful age, and by me first carefully examined and cautioned, and sworn to tell the whole truth,

That he lives a further distance than one hundred miles from the town of Frankfort.

To the interrogatories as propounded by the defendants, he, said deponent, Robert Fletcher, saith:

That in the year 1824, James Martin, who was then the agent of William Clark, showed to me the beginning corner of G. R. Clark's 36,962 acre survey, on an ash tree marked with very ancient marks, a corner which was standing just below and opposite the point of land between the rivers Ohio and Tennessee, and above the head of the island in the Ohio, and on the lower side on bank of the Tennessee river at the junction of the said rivers Ohio and Tennessee. I never saw the second corner at the two white ashes, until within the last five or six years; it stands on the bank of a creek that empties into the Ohio, opposite the said island; they are plainly marked as ancient corners, and also marked apparently within the last 15 or 20 years; I assisted in blocking out one

of the ancient marks; on one of the white oaks it was plainly chopped in the tree, and the growths or annulations from the chop to the outer edge of the tree, counted distinctly 53 years, which corresponded with the age of the survey. I have seen as early as 1824, the lower back corner of the 37,000 acre survey of G. R. Clark, at the Hickory and white oak; when I saw it, the white oak was cut down; I did not get off my horse to examine it; the hickory was marked as a corner with ancient marks; it stands near a drain running west; I was with the surveyor *on the* part of the time, when this line was run to the mouth of Gar creek, the fifth creek below Massack; and second corner of second survey, I found the line very anciently marked, and chopped out a block with one of the marks, which counted upwards of 43 years; the chop was somewhat decayed, and I could not count all the growths; I have also, of late years seen the walnut corner; it is anciently marked as a corner, and stands on the bank of the Ohio river, about 3 miles below Massac creek and Fort, and between the Ohio and a lake; this is the common corner between the 36,962 acre survey and the 37,000 acre survey of said Clark. As early as April, 1824, James Martin told me that he was tenant of Clark; that he then resided on the 36,962 tract of land; his lease, I have seen it, is, I think, dated as early as 1819, and for 7 years, since 1825, I know that Clark, by his tenants, has been in the continued and uninterrupted possession of the 1200 and 1,333⅓ acre surveys of Porterfield, lying above the mouth of what is called Perkin's creek, and running up the Ohio river, above where the town of Paducah now stands, which are in the bounds of the 36,962 acre survey of said Clark; I also know, that the two surveys of Porterfield, lying below what is now called Perkin's creek, been in the possession of Clark, by his tenants residing thereon, ever since the year 1825. On the 1,333⅓ acre survey claimed by Porterfield, I was informed by Joseph Daniel in the spring or beginning of the summer, 1824, that he had settled on said land as tenant of Clark, 1822, and that in the year 1824, Porterfield's agent called on him and threatened to sue him, if he did not lease of Porterfield, and that he did *take* a lease rather than to have a suit, and shortly afterwards he transferred his lease to Luke Bryant and one Adams, and *take* a lease on a part of said tract of land at a different place of Clark. I was present when Gen'l Clark evicted the tenants of Porterfield, by warrants of forcible entry and detainer, and saw the possession delivered to his agent, in the year 1825; a few days after Robert Triplett, who was the military agent after Heron, who leased to the persons turned out, was in the neighbourhood. I heard the agent of Clark and him in conversation about the land; Clark's agent urged him to traverse the jury, and Triplett said he would not, but he would bring suit for Porterfield. The 1200 and 1,333⅓ acre survey, as claimed by Porterfield, has been in the uninterrupted possession of Clark, from the year 1824, by his tenants, Piles, Childress,

McElyea, Bryant, Davis, Hilland, Harrison, Means, Bileman and Woolfolk, Daniel and others, residing thereon up to the present day. The two surveys claimed by Porterfield, below what is now called Perkin's creek, has been in the possession of Clark, from the year 1824, by his tenants, Mosly, Harper, Star, Beasley, Rollins, Doyle, Griffiths, Means, Buckler and others, residing thereon up to the present date. I know of no interruption about the possession of Clark to said lands, except as heretofore stated, when I first settled in this county, in the spring of 1824; James Martin, J. Webb, J. Mosely, J. B. Hern, Wm. Grimes, Wm. Brown, W. Powers, T. Thompson, Wm. Armstrong, C. Ferguson, J. M. Dickin, Joseph Postleweight and others, were residing within the limits of Clark's 36,962 acre survey, and claiming to hold possession under said Clark; all of said settlements and others have been continued in the possession of said Clark, by tenants residing thereon up to this date. The 37,000 acre survey of Clark has been in his uninterrupted possession ever since the year 1825, by many tenants residing thereon up to the present day.

Since the eviction of the tenants of Porterfield, as above stated, I know of no one claiming under him; and I have resided ever since 1824, up to the present time, on the lands of Clark, and in the immediate neighborhood of the lands claimed by Porterfield; and further, this deponent sayeth not.

R. FLETCHER.

Depo'n of I. D. Martin.

Also, the deposition of I. D. Martin, of lawful age, taken at the time and place, and for the purposes set forth in the caption, who, being by me, William Jones, a justice of the peace as af'sd, first duly cautioned and examined, and sworn to tell the whole truth, touching the matter of controversy, deposeth, that he resides more than 100 miles from Frankfort; and in answer to the interrogatories as propounded, sayeth:

In April, 1824, I came to the county of McCracken to reside; the agent of Clark, who had come down for the purpose of surveying, and placing tenants on the land, was just leaving; they were many persons then living within the bounds of Clark's 36,962 acre survey, who were holding the possession under Clark's claim, by permission of his agent, James Martin, who held a written lease for the whole tract from June, 1819, for the term of seven years from its date.

Among those who were settled on it, William *Gums*, Brooks, Wm. J. Daniel, Mosly, Postlewright, and many others, some of whom resided on what is called Porterfield's claim, in the neighborhood of Paducah. Shortly after my settlement in said county, I understood that Porterfield's agent gave leases to some persons

living in the neighborhood of the mouth of Tennessee. Afterwards, some time in the year 1825, I was present at the eviction of said Porterfield's tenants, and was present when the officer surrendered possession to the agent of Clark; I have lived in the county ever since, and have known of no possession held by any persons, except as tenants of Clark, except the above stated tenants of Porterfield; Clark has had tenants within the reputed bounds of Porterfield's claim ever since my acquaintance with the country.

The thirty-seven thousand acre survey, or lower tract of Clark, the said Clark has had in possession ever since 1825, by many tenants holding by lease from year to year, and residing thereon; amongst them were Owen Newton, Gregory Porter, and many others. James Martin, the above named lessee, had a wood yard when I became acquainted with him 1824, on or near where the lower boundary of Paducah now is.

I have been frequently over on the south boundary of Clark's upper tract of 36,962 acres; the marked lines appeared very ancient; but never have seen either of the corners, except the walnut corner on the Ohio, which stands about 3 miles below Fort Massack.

I have seen both the lower corners of Clark's 37,000 acre tract; the one standing at the mouth of Gar creek, or the 5th below Massack creek, which was marked on a cotton-wood and some other; 'twas not distinctly recollected; and have run the line from said corner to the south-west corner on two hickories and white oak, that was cut down when I first saw it, which was some time in 1825; I recollect to have *saw* said letters marked on said tree, the marks on said corner; 'twas same as ancient marks when I first saw them.

I have known the mouth of the Tennessee since 1821 or two, and should denominate between the point and island, as the upper mouth, and between the foot of said island and the main shore, the lower mouth, as boats pass frequently through both passes into the Tennessee river; and farther this deponent sayeth not.

I. D. MARTIN.

STATE OF KENTUCKY, McCRACKEN COUNTY, *sct.*

I, William Jones, a justice of the peace in and for the county of McCracken, duly commissioned and sworn, and acting as such, and by virtue of my commission, one of the Judges of the county Court of McCracken county af'sd, do certify, that by virtue of my commission af'sd, at the request of the defendants in the cause named in the caption of the depositions preceding, I did cause to come before me the witnesses, Robert Fletcher and I. D. Martin, at the place and time and for the purposes named in the caption, and because the said witnesses lived more than 100 miles from Frankfort, the place of holding the court afor'sd, did not cause any notice to be delivered to the adverse party, of the time and place of taking the deposi-

tions, and because the adverse party, as I know of, does not reside within 100 miles of the place of taking the same, nor hath he any known agent or att'y within that distance, known to me; that said witnesses, Robert Fletcher, and I. D. Martin, was by me carefully examined, cautioned and sworn, then and there to testify the whole truth; that said depositions were wholly reduced to writing in my presence, by the said deponents themselves; and that they, then and there, in my presence, subscribed the same; that I am not of council or attorney for either of the parties to the cause, or interested in the event of the same. All which is certified to said court as the cause of the taking of this deposition, and the manner it is done.

WM. JONES, *J. P. M. C.*

STATE OF KENTUCKY, McCRACKEN COUNTY, *L. S:*

Depo'n of Philip Williams.

The deposition of Phillip Williams, of lawful age, taken at the house of George Woolfolk, in Paducah, in the county of McCracken, on the 28th December, 1840, before William Jones, a justice of the peace, in and for said county, and by virtue of his commission, a justice of the peace, one of the judges of the county Court of said county, duly commissioned and qualified to act ; said deposition to be read as evidence in a certain controversy in chancery, depending in the Circuit Court of the United States of America, in and for the Kentucky district, wherein Robert Porterfield is complainant, and William Clark's heirs and representatives, and George Woolfolk, John *McElyea* and others, are defendants. The said deponent, by me as a justice of the peace as aforesaid, being first carefully cautioned, examined and sworn to tell the whole truth, saith, that he lives over one hundred miles from Frankfort; and in response to the written interrogatories here now presented and attached to this deposition, which *an* certified copy from the clerk of said court, as filed in his office, he, the deponent, saith, as to the first question, he knows nothing particular of the boundaries of either of Clark's surveys west of the Tennessee river; he has been a pilot, and has known the mouth of the Tennessee river for the last 26 or 7 years; he has heard the point of the head of the island called the upper mouth, and point of the foot of the island called the lower mouth; since his knowledge of the river, the steamboat channel has sometimes been around the head of the island into the Tennessee, which he considers the proper mouth; as to the possession, he knows that Clark has had the actual possession of the 36,962 acre tract ever since the year 1822, by tenants residing thereon; that one James Martin was the tenant of Clark, when this witness first knew it, which was in 1822, under a written lease from Clark or his agent, for seven years, dated sometime in the

year 1819; that this witness understood from Martin and Clark, and his agent, that said Martin had verbal authority to permit persons to settle under Clark's claim, and prohibit persons settling under any other claim except Clark's; that in the year 1821 or 2, *that* one James Davis and Fowler, his son-in-law, both settled under Clark's claim, by the express permission of said Martin; that shortly after said Davis died, and his widow, Nancy Davis, continued there under the same understanding with Martin, until Porterfield prevailed on her to take a lease under him, which was sometime in 1824, which is the same place John Pilles, holding under Mrs. Davis' lease, was dispossessed of by a writ of forcible entry and detainer, which place is on Porterfield's survey, which calls for the mouth of Delaware creek, and about two miles below Paducah. Mrs. Davis removed from the place shortly after she took the lease. This deponent knows, that in 1822, one Joseph Daniel settled where Paducah now is, under the same terms that did Davis and Fowler, and continued to reside on the same terms, until he took lease from Porterfield, about the same time; that shortly after he transferred his lease to one Addams, who transferred to one Luke Bryand, also was assignee of one Henry Wells, who had taken a lease under Porterfield about the same time that the said Daniels transferred his lease to Bryand; both these places are the one in, and the other adjoining Paducah; that William L. Hickerson *who* was attending to a wood yard, where Paducah now stands, in possession of said James Martin, cutting and selling wood to steamboats, about the same time also took a lease from Porterfield; that all these, Addams, Daniel, Hickerson, Wells, and Mr. Davis, shortly moved off; and *that* Luke Bryand, who held two of the places under Porterfield, and that Cosby and John Piles, were dispossessed by a writ of forcible entry and detainer.

At the suit of James Martin in October, 1825, the deponent states, that Clark has continued in the possession of said places ever since, without interruption. The deponent says that he has resided ever since 1822, near Paducah, on Clark's 36,962 acre survey, as his tenant; he further states, James Martin, in company with George Woolfolk, agent of Clark, applied to him in the month of October, 1825, for warrants of forcible entry and detainer, against John Piles and N. Cauley, and two against Luke Bryand for four tenements within Clark's 36,962 acres, the defendants claiming to hold possession under Porterfield; that he presided over the trials as a justice of the peace; the jury found in favor of Martin, against the defendants' writs of possession to James Martin; that said places are within said Porterfield's two surveys; this deponent knows that as early as 1822, Jerry Week, Joseph Mosley, James B. Herrin, William Brown, Thomas Thomson, William Armstrong, William Gorer, Joseph Gum, Charles Ferguson, William Grimes, Joseph Postlewate, and many others, resided under the same terms and conditions as did Davis, Fowler, Daniel and this deponent, on the

36,962 acre survey, until the year 1825, when written leases were given with memoran*dums* endorsed on the back of each lease, stating that said leases were to run seven years from the settlement in each lease; that those places have ever since been occupied by persons claiming under Clark; that the 37,000 acre tract has been in the continued possession of Clark, by his tenants, ever since the year 1822; that James Martin resided on the 36,962 acre tract, until after the expiration of his lease.

This deponent further saith, that the two warrants of forcible entry and detainer, of Martin against L. Bryant, and the same against N. Cauley, the same against John Pille, together with the verdict of the jury, judgment, writ of restitution, and return of execution, thus marked, No. 1,2,3,4, are the original papers in the cases referred to by this deponent, and kept in his office, herewith returned and made part of this deposition.

He further states, that James Martin, in the neighborhood, was looked upon always as the tenant and agent to keep possession of Clark's land; and further this deponent saith not.

PHILLIP WILLIAMS.

Justice's fees, - - - -	$ 1 00
Witness " - - - -	50
	$1 50

Paid by defendants.

WM. JONES, *J. P. M. C.*

STATE OF KENTUCKY, MCCRACKEN COUNTY, *sc.*

I, William Jones, a justice of the peace in and for the county McCracken and the Commonwealth of Kentucky, duly commissioned, sworn and acting as such, and by law and by virtue of my commission, one of the judges of the county court of the said county of McCracken, as aforesaid, and acting as such, do certify, that at the request of the defendants in the suit named in the caption, I caused the above named Philip Williams, deponent in the foregoing deposition, to come before me at the time and place in the caption stated, because the said deponent, Philip Williams, lives a greater distance from Frankfort than one hundred miles, the place of holding said court of the United States, as is stated. I did not cause any notice to be given to the adverse party, of the time and place of taking this deposition, because the said adverse party, as I know of, does not reside within one hundred miles of the place of taking this deposition, or any *known* agent or attorney to me within that distance. That said witness, Philip Williams, was by me first carefully examined, cautioned and sworn, then and there to testify the whole truth; the said deposition now

wholly reduced to writing by the deponents themselves, in my presence, and that the deponents then and there, in my presence, subscribed the same. That I am not council or attorney for either of the parties to the cause, or interested in the event of the same. All which is certified to said court, as the cause thereof this deposition is taken, and for the manner it is done.

WM. JONES,
A Justice of the peace of McCracken County, and one of the Judges of the County Court of said County.

Writ of forcible Entry and Detainer, Martin ag't Bryant.

KENTUCKY, *McCracken County, sct.*

To the Coroner of said County:

Whereas, James Martin has made complaint to me, Philip Williams, a justice of the peace for said county, that Luke Bryant did, on the 1st day of June, 1824, forcibly enter into, and doth forcibly detain from the said James Martin, one dwelling-house and field, containing about fifteen acres, near the Ohio river, in the county aforesaid, which was in the peacable possession of the said James Martin; you are therefore commanded to summon twelve good and lawful men, house-keepers, of your county, to meet on the premises aforesaid, on the 21st day of the present month, October, 1825, to inquire into the forcible entry and detainer aforesaid, and give the said Bryant at least three days' notice of the time and place of the meeting of the jury, and have there this writ.

Given under my hand and seal, as justice of the peace for said county, this 17th October, 1825.

P. WILLIAMS, *J. P. M. C.* [L. S.]

Return.

Came to hand, 17th October, 1825, and executed same day on the within named Luke Bryant, by reading and explaining the within warrant, and informing the said Bryant of the time and place of trial.

WM. GLOVER,
Coroner of McCracken County.

Verdict of Jury.

We, of the jury, find the within named Luke Bryant guilty of the forcible entry and detainer complained of in the within warrant.

JOSEPH MOSEBY,
Foreman.

It is ordered and adjudged, that the plaintiff, James Martin, have restitution of the premises within and that he recover of the defendant, Luke Bryant, his costs expended in the prosecution of this warrant.

Given under my hand and seal, this 21st October, 1828.

P. WILLIAMS,
J. P. McC. C'ty. [L. S.]

KENTUCKY, *McCracken County, sct.*

To the Coroner of said County.

Whereas, Luke Bryant, by an inquisition taken before me, Philip Williams, a justice of the peace for said County, hath been found guilty of a forcible entry and detainer of one house and field, lying near the Ohio river, in the county aforesaid, to the injury of James Martin:

You are therefore, in the name of the Commonwealth of Kentucky, commanded, that with the power of the county, if necessary, you put the said James Martin in the possession of the said premises, and make return within 60 days to me, how you have executed this warrant.

Given under my hand and seal, this 25th October, 1825.

P. WILLIAMS, *J. P. McC. Ct'y.*

Came to hand the 20th October, 1825, and executed the same day, by turning the within named Luke Bryant out of possession, and delivering the possession of the premises to James Martin, named within.

WM. GLOVER, *C. McC. C.*

KENTUCKY, *McCracken County, sct.*

To the Coroner of said County.

Whereas, James Martin hath made complaint to me, Philip Williams, a justice of the peace for said county, that Luke Bryant did, on the 1st day of June, 1824, enter into, and doth forcibly detain from the said James Martin one dwelling-house and field, containing about twelve acres, near the Ohio river, in the county aforesaid, which was in the peaceable possession of the said James Martin: You are therefore commanded, to summon twelve good and lawful men, house-keepers, of your county, to meet on the premises aforesaid, on the 21st day of the present month, (October, 1825,) to inquire into the forcible entry and detainer aforesaid, and give the said Bryant at least three days' notice of the time and place of the meeting of the jury, and have then there this writ.

Given under my hand and seal, as a justice of the peace of said county.

P. WILLIAMS, [L. S.]
J. P. McC. C.

Came to hand the 17th October, 1825, and executed the same day on the within named Luke Bryant, by reading and explaining the within warrant, and informing him of the time and place of trial.

WILLIAM GLOVER,
Coroner of McCracken County.

We, of the jury, find the within named Luke Bryant guilty of the forcible entry and detainer complained of in the within warrant.

JOSEPH MOSBY,
Foreman.

It is ordered and adjudged, that the plaintiff, James Martin, have restitution of the premises mentioned in the within warrant, and that he receive of the defendant, Luke Bryant, his costs expended in the prosecution of this writ.

P. WILLIAMS, [L. S.]
J. P. McCracken County.

KENTUCKY, *McCracken County, sct.*

To the Coroner of said County.

Whereas, Luke Bryant, by an inquisition taken before me, Philip Williams, a justice of the peace for said county, hath been found guilty of a forcible entry and detainer of one house and field, lying near the Ohio river, in the county aforesaid, to the injury of James Martin: You are therefore, in the name of the Commonwealth of Kentucky, commanded, that with the power of the county, if necessary, you put the said James Martin in possession of the said premises, and make return within 60 days to me, how you have executed this warrant.

Given under my hand, this 25th October, 1825.

P. WILLIAMS, [L. S.]
J. P. McC. C'ty.

Came to hand, 25th October, 1825, and executed the same day, by turning the within named Luke Bryant out of possession, and delivering the possession of the premises to the within named James Martin.

WM. GLOVER,
C. McC. C.

KENTUCKY, *McCracken County, sct.*

To the Coroner of said County.

Whereas, James Martin hath made complaint to me, Philip Williams, a justice of the peace for the said county, that Nathaniel Cosby did, on the first day of June, 1824, forcibly enter into, and doth forcibly detain from the said James Martin one dwelling-house and field, containing about 20 acres, near the Ohio river, in the county aforesaid, which was in the peacable possession of said James Martin: You are therefore commanded, to summon twelve good and lawful men, house-keepers, of your county, to meet on the premises aforesaid, on the 21st day of the present month, (October, 1825,) to inquire into the forcible entry and detainer aforesaid, and give to the said Cosby at least three days' notice of the time and place of the meeting of the jury, and have then there this writ.

Given under my hand and seal, as a justice of the peace for said county, this 17th October, 1825.

P. WILLIAMS, [L. S.]
J. P. McC. C.

Came to hand, 17th October, 1825, and executed same day on the within named N. Cosby, by reading and explaining to him the within warrant, and informing him of the time and place of trial.

WM. GLOVER,
Coroner of McCracken C'ty.

We, of the jury, find the within named N. Cosby guilty of the forcible entry and detainer complained of in the within warrant.

L. SWEETMAN, *F.*

It is ordered and adjudged, that the plaintiff, James Martin, have restitution of the within premises, and that he recover of the defendant, Nathaniel Cosby, his costs expended in the prosecution of this writ.

Given under my hand and seal, this 21st October, 1825.

P. WILLIAMS, [L. S.]
J. P. McC. C.

KENTUCKY, *McCracken County, sct.*

To the Coroner of said County.

Whereas, Nathaniel Cosby, by an inquisition taken before me, Philip Williams, a justice of the peace for said county, hath been

found guilty of a forcible entry and detainer of an house and field, lying near the Ohio river, in the county aforesaid, to the injury of James Martin: You are therefore, in the name of the Commonwealth of Kentucky, commanded, that with the power of the county, if necessary, you put the said James Martin in possession of the said premises, and make return within 60 days to me, how *the* you have executed the warrant.

Given under my hand, this 25th October, 1825.

P. WILLIAMS, [L. S.]
J. P. McC. C.

Came to hand the 25th Oct., 1825, and executed the same day, by turning the within named Nathl. Cosby out of possession, and delivering the possession of the premises to the within named James Martin.

WILLIAM GLOVER,
C. McC. County.

KENTUCKY,
McCracken County, sct.

To the Coroner of said County:

Whereas, James Martin hath made complaint to me, Philip Williams, a justice of the peace for said county, that John Piles did, on the 1st day of June, 1824, forcibly enter into, and doth forcibly detain from the said James Martin, one dwelling house and field containing about 15 acres, near the Ohio river, in the county aforesaid, which were in the peaceable possession of said James Martin:

You are therefore commanded to summon twelve good and lawful men, house-keepers, of your county, to meet on the premises aforesaid, on the 21st day of the present month, (October, 1825,) to enquire into the forcible entry and detainer aforesaid; and give to the said John Piles at least three days' notice of the time and place of the meeting of the jury, and have then there this writ.

Given under my hand and seal, as a justice of the peace for said county, this 17th Oct., 1825.

P. WILLIAMS, [L. S.]
J. P. McC. C.

Came to hand the 17th Oct., 1825; executed same day, on the within named John Piles, by reading to him, and explaining the meaning of said warrant, and informing him of the time and place of trial.

WILLIAM GLOVER,
Coroner McCracken Cty.

We, of the jury, find the within named John Piles guilty of the forcible entry and detainer complained of in the within warrant.

JOSEPH POSTLEWHAIT, *F.*

It is ordered and adjudged, that the plaintiff, James Martin, have restitution of the premises mentioned in the within warrant, and that he recover of the defendant, John Piles, his costs, expended in the prosecution of the within warrant.

P. WILLIAMS,
J. P. McC. County.

KENTUCKY,
McCracken County, sct.

To the Coroner of said County:

Whereas, John Piles, by an inquisition taken before me, Philip Williams, a justice of the peace for said county, hath been found guilty of a forcible entry and detainer of one house and field, lying near the Ohio river, in the county aforesaid, to the injury of James Martin: You are therefore commanded that, with the power of the county, if necessary, you put the said James Martin in possession of the said premises, and make return within 60 days, to me, how you have executed this warrant.

Given under my hand, this 25th day of Oct., 1825.

P. WILLIAMS, [L. S.]
J. P. McC. County.

Came to hand the 25th Oct., 1825, and executed the same day; turning the within named John Piles out of possession, and delivering the possession of the premises to the within named James Martin.

WM. GLOVER,
Coroner McC. County.

Dep'on of F. A. Harrison.

STATE OF KENTUCKY,
McCracken County, sct.

The deposition of F. A. Harrison, taken before me, George Smedley, a justice of the peace, in and for McCracken County aforesaid, and one of the judges of the county court of said county, in the Commonwealth aforesaid, on the 19th day of April, 1841, at the office of D. S. Patton, in Paducah, McCracken County aforesaid, to be read as evidence in a suit depending in the Circuit Court of the United States, for the 8th circuit, Kentucky district, to be holden at Frankfort, Kentucky, wherein Robert Porterfield is complainant,

and Merrideth L. Clark, Geo. R. H. Clark, Jefferson K. Clark, heirs of Wm. Clark, dec'd, and others, defendants.

The deponent being of full age, and first carefully examined, and cautioned, and sworn by me to tell the truth, saith, that he lives a greater distance than one hundred miles from Frankfort, the place of holding said court; and being further interrogated, saith:

Question by def't. Have you any knowledge of the boundary lines, or corners of George R. Clark's survey of 36,962 acre *survey*, below Tennessee river; if so, state it.

In the winter of 1827, I saw a corner marked G. C. on the south-east side of an ash tree, and on the west side of same tree, the letters G. R. C. *was* plainly marked down *down;* on same tree the figures 1780 or 82, was dimly seen. I *was* then told it was the beginning corner of *Clark's* survey, and G. Clay's.

I have since seen what has been called Clark's back corner, up Island creek, on two white oaks; was present when the corner was examined; chopped the tree until we from the old original marks counted fifty one, or two, from the old marks outward; this beginning corner stood opposite the upper end of the Island, called Tennessee Island, and a few rods, say four or five, from the water's edge also; the marks on this tree had the appearance of being very old, standing opposite the Tennessee river. In March, 1812, I first descended the Ohio river to Orleans; was then told that this, (the upper mouth) was the mouth of Tennessee river; I did every year since, until the year 1827, pass up and down said river, some times as often as three and four times a year; and at all times, *by* myself and other boatmen, called the upper mouth the mouth of Tennessee river.

Question. How long have you resided in Paducah?

Answer. Since the 1st November, 1827.

Question. Who has been in the possession of the lands, in and about Paducah since that time?

Answer. Clark, by his tenants.

Question. Have you known during that time Porterfield, or any other person (not holding under Clark,) to be in possession of any lands in the neighborhood of Paducah?

Answer. I have not.

Question. What is the general acceptation of the term drowned lands, as used by surveyors and others?

Answer. Such lands as are rendered unfit for cultivation; such as ponds and swamps, which contain water after the season for cultivation is so far advanced, that a crop could not be made.

Question. Are you acquainted with the lands lying below Paducah, and above what is called now *Perkin's* creek and covered by Porterfield's surveys on Clark's lands?

Answer. I am.

Question. Would you consider those lands as coming within the character of drowned lands or not?

Answer. I would not; as with the exception of one *small pond*, they are fit for annual cultivation.

By complainant's counsel. State whether such lands as are subject to inundation, the latter of May or the first of June, would not come under the head of drowned lands.

Answer. I should not.

And further this deponent saith not.

F. A. HARRISON.

Dep'on of J. C. Calhoun.

Also the deposition of J. C. Calhoun, of lawful age, and first carefully examined, cautioned and sworn by me, to tell the whole truth, saith, that he lives more than one hundred miles from Frankfort, Kentucky.

Question by defendant. If you have any knowledge of the possession of the lands near and around Paducah, covered by what is called Porterfield's claim, on Geo. R. Clark's 36,962 acre survey, state all you know about it.

Answer. In the winter of the year 1825, I was at the place where Paducah now lyes, and Mr. Daniel Adams was raising a house in the field now adjoining the town of Paducah, and after assisting him to put up some of the logs on the cabin, which he was building, I asked him if he had bought the land; he said no, he had leased it from General Clark. I have known the place ever since, and Gen'l Clark has been in possession ever since, by his tenants and purchasers, and I know of no other person being in possession since the year 1825.

And further this deponent saith not.

J. C. CALHOUN.

Justice's fees $1 00—witness fees, $½. Paid by defendant.

G. SMEDLEY, *J. P.*

STATE OF KENTUCKY,
McCracken County, sct.

I, George Smedley, one of the justices of the peace, in and for McCracken County, in the State aforesaid, duly commissioned, sworn and acting as such, and by virtue of my said commission, one of the judges of the County Court of McCracken aforesaid, do certify, that at the request of the defendants in the cause, I caused the above named F. A. Harrison, and J. C. Calhoun, to come before me at the time and place named in the caption; and because the said witness lives at a greater distance than one hundred miles from Frankfort, the place of holding said Court of the United States, as is stated, I did cause a notice to be given to the agent and attorney of complainant, who was passing by, which notice is herewith returned.

The said witnesses were by me first carefully cautioned, examined and sworn to tell the whole truth, touching the matter. That the said depositions were then and there wholly reduced to writing, by the witnesses in my presence, and that they then and there in my presence subscribed the same.

That I am not of council or attorney for either of the parties to the cause, or interested in the event of the same. All which is certified to the court, as the cause of taking these depositions, and the manner of doing thereof.

GEO. SMEDLEY, *J. P.*
A Justice of the Peace of McCracken County, and one of the judges of the County Court of McCracken.

WILLIAM CLARK, &c., *ads.* ROBERT PORTERFIELD. } In Chancery.

Interrogatories filed by Def'ts.

Interrogatories propounded by defendants, to be answered by Andrew McCalla, William Gordon, John McIlyea, Isaac Davis, C. Terrill, H. Terrill, Robert Buckler, George Woolfolk, Philip Williams, William Grimes, Walter Lovelace, George Armstrong, Samuel Rice, J. Caldwell, William Powers, Duncan Henderson, Mrs. Martin, Charles Ferguson and Luke *Iorcalman*, witnesses for the defendant.

Each and all of the aforesaid witnesses will state the whole truth of what respectively know in relation to the matters and things in contest in this case. They will each respectively answer and say, whether they have any knowledge as to the boundary of a survey of 36,962 acres of land, upon which a patent issued to Brig. Gen'l Geo. Rogers Clark, on the 15th day of September, 1795; also a survey of 37,000 acres, upon which a patent issued same day to Brig. Gen'l George Rogers Clark; and if they have, state all they know on the subject. State whether they know any thing as to the character of the river, at the mouth of the Tennessee; and if they do, state all they know respectively on that subject; state whether they have seen any of the lines and corners, and state all they know on that subject; and whether they have any knowledge as to the possession which has been held, as to the surveys aforesaid, or either of them, by the defendant or others, through whom he claims, or those claiming under him, and if they have, state all they respectively know on that subject; state all they know as to the boundary of said surveys; and the possession thereof. State if they know any thing of the execution of a *case* to James Martin, by Dennis Fitzhugh, agent for def't, W. Clark; state how long they have known the lands in controversy, and whether any persons have ever resided thereon, as tenants of Porterfield.

A copy—teste:

JOHN H. HANNA, *C. C. C. K. D.*

Interrogatories by Def'ts.

WILLIAM CLARK,
ads.
ROBERT PORTERFIELD. } In Chancery.

Interrogatories propounded by the defendant, Clark, to be answered by Jos. Daniel, Andrew McCalla, Gordon, John McElyea, Isaac Davis, C. Terrell, William Means, Robert Buckler, John Cully, Rodney Case, George Woolfolk, Robert Fletcher, Phillip Williams, J. D. Martin, Robert Thruston, William Grimes, John Hardin, Benjamin Hardin, Tho's T. Terrell, Francis A. Harrison, Walter Lovelace, George Armstrong, Samuel Rice, *Caldwell*, William Rush, Samuel and John Humphrey, *Jesse Sprouce*, William Powers, Turner, witnesses for the defendant; each and all of the aforesaid witnesses will state the whole truth, as to what they respectively know in relation to the matters and things in contest in this case.

They will each respectively answer and say, *whatever* they have any knowledge as to the boundary of a survey of thirty-six thousand nine hundred and *sixty*-two acres of land upon which a patent issued to Brig. Gen'l Geo. R. Clark, on the 15th day of September, 1795; also, a survey of thirty-seven thousand acres, upon which a patent issued the same day, to the said Brig. Gen'l Geo. R. Clark; and if they have, state all they know on the subject; state whether they know any thing as to the character of the river, at the mouth of the Tennessee; and if they do, state all they respectively know on that subject; state whether they have seen any of the lines and corners, and state all they know on that subject, and whether they have any knowledge as to the possession which has been held of the surveys aforesaid, or either of them, by the defendant or others, through whom he claims, or those claiming under him; and if they have, state all they respectively know on that subject; state all they respectively know in relation to the boundary of the aforesaid surveys, and the possession thereof.

WILLIAM CLARK,
By OWSLEY & CRITTENDEN,
his Attorney's.

A Copy—teste:

JNO. H. HANNA, *C. C. C. K. D.*

Dep'ons of John Hardin.

KENTUCKY STATE,
McCracken County, ss:

The deposition of John Hardin, and Mary Martin, taken before

me, William Jones, one of the justices of the peace, and judges of the County Court, of said County of McCracken, in the Commonwealth of Kentucky, on the 13th day of December, in the year 1840, at the house of George Woolfolk, in the town of Paducah, in the county aforesaid, to be read as evidence in a certain suit, depending in the 8th Circuit Court of the United States of America, in and for the Kentucky district, to be holden at Frankfort, wherein Robert Porterfield is complainant, and Meredith L. Clark, Geo. R. H. Clark, Jefferson R. Clark, George Woolfolk, Jno. McElyea, and others are defendants, being first carefully examined, cautioned and sworn by me, to tell the whole truth, touching the matter in controversy, the said J. Harden doth depose and say, that he is in the fifty-seventh year of his age, and that he lives more than one hundred miles from Frankfort.

In answer to the questions as presented to him in writing, and hereto attached: he has been acquainted with the mouth of Tennessee river, ever since the year 1807, or '8; he resided fifteen or eighteen miles from the mouth, until the year 1818, when he married, and settled about two miles above the mouth of said river, and has resided in its neighborhood ever since; he states, in early times at the point between the two rivers, Ohio and Tennessee, was always called the mouth of the Tennessee; keel-boat-men going up and down the Tennessee river, always spoke of it as the mouth, and except in very low water passed between the head of the Island, and the point of land between the two rivers; whilst navigating the two rivers in the last twelve or fourteen years, I have heard this point called the upper mouth, and below the Island called the lower mouth. The Island is in the Ohio; the distance between the head of the Island, and the point of land between the two rivers, is greater than the distance from the Island to the Kentucky shore.

When the Tennessee is highest it runs a large volume of water, above the head of the Island, and when the Ohio is the highest, part of its waters pass on the left of the Island; at a common stage and at low water, part of the waters of the Tennessee pass through above the head of the Island into the Ohio; the Island, since I have known it, has extended down the river; in the year 1819 or 20 I was with Green Clay, James Martin, and others, at the mouth of the Tennessee river; Green Clay then showed me the beginning corner of George R. Clark's survey of 36,962 acres, patented December, 1795; it was a common corner between Clark and Mayo's; standing on the bank of the river, there was then an ash and hackbury, two of the corner trees called for in Clark's patent mark as corner trees, which mark was of very ancient date; one of the marks on the hackbury was chopped out, and upon examination of the growth over the chop, it corresponded with the date of Clark's survey; this corner stands nearly opposite the head of the Island, between the upper and lower mouth, but nearer the

upper mouth; neither of these trees are now standing; the ash stump is still standing there now; from this corner we went to a corner on a creek now called Island Creek, which enters the river opposite the Island, at the mouth of Tennessee; we there found two white oaks and two maples, plainly marked as corner trees, with very ancient marks; this was showed to me as one of Clark's corners by G. Clay, and said he made the survey; I examined and found a line running westwardly, and with a small variation from the patent call of Clark's survey, which satisfied me it was Clark's corner; I have been at this corner often since; the two maples are gone, the two white-oaks are still standing, and marked with ancient marks, as corner trees; I saw one of the marks *blocked* out lately, and the growth over the chop agreed with the date of the survey, as I have several times traced this line, and found some ancient marked trees as line trees. This line passes generally through barrens; there is but little timber of any size, except where it crosses water-courses; I have not been able to find the third corner, where it calls for the five black-oaks, as called for in the survey, but extending the line a few poles, I came to a black-oak *grown* near the head of a hollow, running in a north direction and near a high ridge; from thence running the patent calls, allowing a small variation, I *crost* a creek, and pond or lake, to a dead walnut standing on the bank of the Ohio river, about three miles below Fort Massac; this walnut is much *scard* with the axe and with fire; it has on it some very ancient marks, as a corner corresponding in appearance with the marks on the second corner on this line. I saw some trees marked as line trees, with very ancient marks; the black oak timber is very easy by fire, and the barrens, ever since my knowledge, have generally been burned yearly. I have also surveyed the 37,000 acres, and running the back line from the third corner, as called for in the 36,962 acres, and a few poles over the distance called for in the patent, I found a hickory marked as a corner, with ancient marks on it, and very much scarred with fire, and a fallen white-oak or post-oak, which was very much scarred, so that I could not discover any marks on it. Near a small drain running westwardly, this line passes through barrens; running from this corner with call of patent, with a small variation, I found on this line some trees marked as line trees, with the appearance of ancient marks, to mouth of a creek, now called *Gas* Creek, on the Ohio river; this creek is the fifth creek below Massac Creek. As to the possession, as early as the date of 1823 James Martin was recognised as the agent of Clark, and held possession under him over the 36,962 acres survey; and said Clark has had tenants on said land ever since, up to this date. And about the date 1823, James Martin had a wood-yard where Paducah now is, and John Martin and a man by the name of *Hickerson*, attended to it for him. As to drowned lands, I have always considered such lands as are always so covered with water, as

they cannot be cultivated without being ditched; and as far as I have conversed with surveyors, it has been their opinion.

And further this deponent saith not.

JOHN HARDIN.

Depo'n of Mary Martin.

Depo'n of Mary Martin.

Also, the deposition of Mary Martin, at the same time and place, and for the same purpose, and in the same cause, as set forth in the caption of the foregoing deposition of John Hardin. She being first by me, Wm. Jones, a justice of the peace, and one of the judges of the county court of McCracken, first carefully examined, cautioned, and sworn to tell the whole truth, deposeth and saith:

She is 62 years old, and lives more than one hundred miles from Frankfort. In answer to the written questions, *and* hereunto attached, proposed to her, saith: that she knows nothing in particular of the lines, corners, or boundaries of either of George R. Clark's surveys, near the mouth of Tennessee river, nor does she know any thing of the character of the mouth of the Tennessee river. She states that in the winter of 1818, her husband, James Martin, settled about 3 miles back of where Paducah now stands, not knowing who owned the land; that in the summer of 1819, Dennis Fitzhugh, who was the agent of Clark, came to the house of this deponent's husband, and this deponent's husband took from him a written lease for the 36,962 acre tract, for the term of seven years; her said husband continued on the land until after the expiration of the lease; at the same time this deponent's husband was verbally directed to permit persons to settle the land, and to hold possession for Clark, but to give no written leases; and they were to hold possession until they could see Clark or his agent. Shortly after this, James Davis and his son-in-law, Fowler, applied to deponent's husband for permission to settle on Clark's land, which was granted them, and they settled just above Perkins' Creek, about *have* a mile from the river, and about two miles below Paducah, and Davis remained there until he died; shortly after his death, his widow, Nancy Davis, took a lease of the same place from Porterfield. The deponent saith, in the year 1823 her husband established a wood-yard where Paducah now stands; John Martin and one William L. Hickerson was put there to cut and sell wood for him; and whilst so in possession, said Hickerson took a lease from Porterfield. This deponent knows of no other possession of Porterfield, except as above stated; she states that she knows that Clark has had pos-

ession by different tenants ever since her husband's lease. And further this deponent saith not.

her
MARY ⋈ MARTIN.
mark.

Justice's fees $1
Witness' " 1

$2 paid by defendants.

WM. JONES, *J. P.*

STATE OF KENTUCKY, *McCracken County, sct.*

I, William Jones, a justice of the peace in and for the county of McCracken, and Commonwealth of Kentucky, duly commissioned and sworn, and acting as such, and by law and by virtue of such commission, one of the judges of the county court, and acting as such, do certify, that at the request of the defendants in the suit, as set forth in the caption of the deposition of said John Hardin and Mary Martin, and by virtue of a dedimus herewith returned, which issued from the clerk of the 8th Circuit Court of the United States, for the District of Kentucky, I caused the above named deponents, John Hardin and Mary Martin, in the foregoing depositions, to come before me, at the time and place in the caption mentioned; and that the said John Hardin and Mary Martin, witnesses, were by me, before giving their depositions, carefully examined, cautioned, and sworn to tell the whole truth touching the matter; that then and there the deposition of the said John Hardin was wholly reduced to writing by himself, in my presence; and the deposition of the said Mary Martin was reduced to writing by me, the said William Jones, in presence of the deponent, Mary Martin; and that said deponent, John Hardin, signed and subscribed his name to his deposition, and the said Mary Martin, deponent, made her mark, as her signature, to her deposition, all in my presence; and each of said deponents then and there sworn to the same, before me, as justice of the peace as aforesaid; that I am not of council or attorney for any of the parties, or interested in the event of the cause; all which is certified to the court as the cause whereof these depositions are taken, and for the manner it is done, &c.

Given under my hand, as justice of the peace, in and for the county Commonwealth aforesaid, this 13th day of December, 1840.

WM. JONES, *J. P. McC. C.*

[Here follows map.]

October 30*th*, 1840.

Surveyed for James Johnson, Esq'r, agent for Robert Porterfield's heirs, 2,500 acres of land, situate, lying and being in the county of McCracken, State of Kentucky, and bounded as follows, viz: Beginning on the Ohio, about 5 poles below the mouth of a small run, at a cottonwood and maple, on the beach, and a small locust on the bank, (the rest of the old marks destroyed,) and running thence S. 51°, west 400 poles, to two black oaks and two post oaks, on the bank of a branch of Cross Creek; thence S. 39° E. 86 poles, to three red oaks and a post oak, in a pond; thence N. 62½, W. 364 poles, to two white oaks and a post oak sapling, (south-east corner of Bradley's survey of 1,000 acres, No. 183); thence with Bradley's line, N. 28°, E. 320 poles, to a red oak, (and a hickory and red oak sapling marked as corners, cut down); thence N. 62°, W. 465 poles, (passing at 45 poles, *and* old red oak and three hickories down, marked as a corner,) to two hickories, two sweet-gums, two birches, and a red oak on the bank of Delaware, or as now called, Perkins' Creek; thence with meanders of said creek, and binding on it 600 poles, when reduced to a straight line to its points of junction with the Ohio, at the distance of 4½ miles below the lower point of the Island, at the mouth of the Tennessee river; thence with the Ohio, and binding on it at low water mark, to the beginning. The corner at the mouth of the creek had been destroyed, but the creek had evidently not changed its bed, being enclosed by a high ridge on either side. Almost the entire survey, from the point A to D, between the line drawn and the river, on the plan, is subject to inundation at high water, as proven by the quantity of vegetable deposite still lying on the ground from the recent fresh. Run by true meridian, variation 8° easterly. This survey includes the two tracts, No. 304, entered August 9th, 1784, on part of a military warrant, No. 799, and containing 1,333⅓ acres; and No. 164, entered August 5th, 1784, on part of a military warrant, No. 58, containing 1,200 acres. The other three tracts were laid down on the plan from a copy of the original surveys, now in the office of the Surveyor of Virginia military lands.

E. A. DRAKE, *Ass't Surveyor.*
FRANCIS T. TAYLOR,
S. V. M. L.

UNITED STATES OF AMERICA,
8th Circuit, Kentucky District, sct.

I, John H. Hanna, clerk of the eighth Circuit Court of the United States of America, in and for the Kentucky District, do hereby *hereby* certify, that the foregoing four hundred and eight pages, and the maps and platts thereto attached, contain a full, true, and complete transcript of the record and proceedings in the suit aforesaid.

In testimony whereof, I have hereunto subscribed my [L. S.] name and affixed the seal of said court, this 6th day of December, A. D. 1841.

JNO. H. HANNA.